United States Court of Appeals for the Second Circuit



APPELLANT'S APPENDIX

76-1465

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

THE UNITED STATES OF AMERICA.

Appellee,

- against -

COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO,

Appellants.

Appeal From The United States District Court For The Eastern District Of New York

APPELLANT'S APPENDIX

BENJAMIN A. DEMOS Attorney for Appellant, Leopold Lozano 16 Court Street Brooklyn, N.Y. 11241 (212) TR 5-1767



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APPENDIX

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UNITED STATES DISTRICT COURT EASTERN DISTRICT OF NEW YORK 2 3 UNITED STATES OF AMERICA, -against-5 76-CR-182 COSME A. CACERES, LEOPOLD LOZANO 6 and JOSE A. LIRIANO, 7 Defendants. 8 9 United States Courthouse 10 Brooklyn, New York 11 June 3, 1976 12:00 NOON 12 13 Before: 14 HONORABLE HENRY BRAMWELL, U.S.D.J. 15 16 17 18 19 20 HENRI LEGENDRE ACTING OFFICIAL COURT REPORTER

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Appearances:

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DAVID G. TRAGER, ESQ. United States Attorney for the Eastern District of New York

BY: DAVID GOULD, ESQ. Assistant U.S. Attorney

MARION SELTZER, ESQ. Attorney for Defendant Caceres

BENJAMIN DEMOS, ESQ. Attorney for Defendant Lozano

ROBERT KRAMER, ESQ: Attorney for Defendant Liriano

Legal Aid Society

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MR. DEMOS: We are ready.

THE COURT: (wear in the interpreter.

(Whereupon the interpreter, Albert Boyne was sworn by the Clerk of the Court)

THE COURT: We are having a hearing day.

MR. GOULD: This is a suppression hearing for a seizure of money and also as to various statements that were made, and perhaps if I could make just a quick two, three minutes of proof --

MR. DEMOS: Before counsel starts the case may we have all witnesses who are involved in this hearing?

THE COURT: Excluded.

MR. GOULD: With the exception of our case agents .

THE COURT: Case agents don't have to be excluded. Case agents may sit up here with you counsel.

MP. GOULD: What happened your Honor was that a gentleman went into a store on Broadway in Astoria Queens and gave some money for a store owner. The co-owner of the store, the person -- the person then left. The owner of the store went to his co-owner and said, "Look at this twenty. It looks had to me."

That person said it's a bad twenty-- former cab driver.

Where did the guy go? The guy that took the money said, "out the door. We don't have that bill. The person took it out and disappeared.

This follow, Mr. Simpns went after this person got in his car. He had seen the person and picked Mr. Caceres out of a photo operad identifying Mr. Caceres as that person. He then was driving his car and he saw Mr. Caceres in a store called -- I think it was Latora, or something like that.

He saw him in the store buying something and he saw a parked car with the lights out next to it. He then followed the car again to another store and after the people ran into that other store, Mr. Simmons went to get some police officers.

He got Mr. Gafnney and Officer Hughs gave them a description of the car and where he had seen the bills passed.

MS. SELTZER: Is this information given -THE COURT: Offer of proof.

MR. GOULD: To give a background so things don't come in out of nowhere.

MS. SELTZER: This is offered as evidence?

THE COURT: It's an offer of proof, Mrs.

Seltzer. Do you know what that is?

MRS. SELTZER: It seems to me --

it; if it's all right with you I'll take it. It's an offer of proof, and it is of proof of anything. It's just an allegation by the Government of its position.

Do you have anything else to say, Ms. Seltzer?

MS. SELTZER: I've just never been in a

situation where the U.S. Attorney --

THE COURT: Have you ever given an offer of proof in a case?

MS. SELTZER: Not to this extent --

THE COURT: This is not proof.

MR. GOULD: Your Honor, for the record,

Ms. Seltzer has never been in a case where the U.S.

Attorney gave them the entire case detail by detail,

all the material, every event, made witnesses available in any event.

The one bill was given to agents. Gaffney drove back with his partner and Mr. Simmons to one of the stores where Mr. Simmons had said they had seen a bill passed.

They took that bil, went across the street to a bank which was opened. Somebody in the bank said, "That's a counterfeit bill." They got the description of the car, that there were three people

in the car, the license plate of the car. Mr. Simmons was then sent home.

put the three individuals under arrest.

Then in the course -- to satisfy Ms. Seltzer I won't go into details. Money was found in the car. Genuine currency was found inside the car and this is one element that I assume they are going to want to suppress.

The officers drove down the block, saw the

There were five, twenty dollar counterfeit
bills found in a bag which somebody in a gathering
crowd had grabbed. The officer gave chase. The
person dropped the bag, and the bag had five counterfeit twenty's.

There was a statement made by Mr. Caceres who was the only one of the three who spoke English. The Miranda warnings were given. He stated he found this money in the back of his cab.

The gentlemen were then taken to the police station, given Miranda warnings and Mr. Caceres made a statement that he found it in the back of a cab and this time he added that he had shown it to his friend, and his friend said the money was bad, but he passed it anyway.

THE COURT: Did he name the Triend?

MR. GOULD: No, he did not.

Later all three were taken to Secret Service Headquarters where an agent who spoke Spanish interviewed Mr. Lozano and Mr. Liriano. Mr. Lozano gave a statement that was written down in English by Agent Smith and then — we'll get into the details of that at the hearing, but there was a statement. Mr. Liriano made an oral statement and Mr. Caceres made a lengthy written statement which was somewhat in contradiction with his statement at the station house.

Those three statements, I guess would be the statements -- Well then Mr. Caceres made three statements; the first one would be exculpating. He just said he found it in his cab, that was at the scene.

Then he made a further statement at the station house. Then a written statement again, not written by him but written by the agent, but read and initialed by Mr. Caceres at the Secret Service Headquarters.

My purpose is going through the offer of proof just so your Honor will understand we -- the genuineThen three days after -- over the weekend I guess, it was a Friday, they were picked up Halloween night, that Monday the car was inventoried they were in,

and a fifty and twenty were found in the ashtray, counterfeit fifty, and counterfeit twenty.

Carried A CTT

In addition, the next day a Mr. Walkins called and said that -- he also was in the line of travel of the car and he said he had gotten a counterfeit twenty, that he took in between 7:00 and 7:30 -- 6:30 and 7:30, and he sent that in.

This is the thing that I thought was missing.

I told your Honor last time it's now been found it
was in an envelope, the counterfeit twenty that
turned out to be a counterfeit twenty.

Now, Mr. Walkins' employees and Mr. Walkins were shown a photo spread -- were not able to identify the person who came in and passed the twenty.

They only know it was between 6:30 and 7:30, but they don't know who passed it.

Josephine Pollizi who is from Lposris or Latora she could not identify the person who came in.

She knows she got it from 7:00 from a male Hispanic.

Mr. DiCarda is from a grocery store. I showed defense counsel -- I showed him the photo spread in my office with another witness, and he could not pick out the person. He said the person was English, black or Hispanic. That's what he told the people at the scene and he said to me, "I cant' tell. Show

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me a picture of a whole person." I said, "All I have is these head shots. So the only identification made other than the agent's and the arresting officer who of course can identify them having arrested them was Mr. Simmons, who did pick Mr. Caceres out of a photo spread, who is the person who set off this chain reaction.

THE COURT: Are you ready to proceed Mrs.

Seltzer on behalf of Defendant Caceres? Do you have
a memorandum of law for the Court for this proceeding?

MS. SELTZER: I was assuming that Mr. Caceres was joining in the motion of co-counsel.

THE COURT: I don't know whether you had done anything or not, but you are here for the motion and you know you are defending a client, so I'm asking you whether you have done anything on the law that you wish to present to the Court?

MS. SELTZER: Not at this time. I would ask if any issues arise during these proceedings it would seem appropriate --

THE COURT: You'll have a memorandum of law tomorrow.

MS. SELTZER: If there are any issues that come in where it seems appropriate that there is a viable --

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1	Q And where was this?	
2	A On Broadway and Steinway Street.	
3	Q And that's in Astoria, Queens?	
4	A Yes.	
5	Q What were you doing at the time?	
6	A I was making out an accident report on Br	oadwa
7	and Steinway.	
8	THE COURT: Keep your voice up a little.	
9	Now, could you describe briefly what happ	ened
10	when you met Mr. Simmons?	
11	A Mr. Simmons pulled alongside of our radio	1
12	car and informed us that there were three men passing	
13	counterfeit bills on Broadway.	
14	Q Did he describe these three men at all?	
15	A He said that they were Spanish.	
16	Q And did he describe the car?	
17	A Not at that time, no.	
18	Q Now, what did you then do?	
19	A I asked Fr. Simmons if we could follow him	TA .
20	to the last place that he saw them go into. We followed	
21	them to a bakery shop on Broadway.	
22	Q Would that be Lasira Latora?	
23	A Yes.	
24	Q That's 3209 Broadway?	
25	A Yes, it is.	

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1	Q What happened now?
2	A We went inside to bakery shop. I asked the
3	girl behind the counter if somebody came in here and cashed
4	* twenty dollar bill. She said "yes", and I asked if I
5	could look at the bill and she gave me the bill.
6	Q Can I have this marked for identification?
7 -	And this woman was this Josephine Pollizi?
8	A Yes.
9	THE COURT: Mark it for identification. One
10	twenty dollar bill, number F 6781889 a, Marked
11	Government's Exhibit #1 for identification.
12	Q Now, did you day Officer Hughs initialed this
13	bill?
14	A Yes, I did.
15	Q I show you what is Government Exhibit 1 for
16	identification; is this the bill that was handed to you?
17	A Yes, it is.
18	Q What did you do when that lady gave you the
19	- bill?
20	A I took the bill across the street to a bank.
21	Q Was the bank open at that hour?
22	A Yes.
23	Q Did you speak to anybody there?
24	A Yes. I asked them if the bill was a counter-
25	feit bill, and he informed me it was.

Gaffney-direct

		Q	Afte	er you	came	out	of	the	bank,	did	you	speak
to	Mr.	Simmons	at	all?								

A Yes. I went back and I asked Mr. Simmons his name, his address, his telephone number, any other information that he could give me.

Q Did he give you any information about the car?

A Yes. He described the car to me, a green Chrysler with the registration number.

Q Was the registration 902 XLL, New York?

A Yes.

Q What happened next?

A Intold Mr. Simmons to go home and somebody will get in contact with him. I proceeded on Broaday, on Broadway between 38th Street and Steinway Street. I observed the green Chrysler.

Q With the same plates?

A With the same plates.

Q What did you do?

A I parked in front of the auto, got out of the car. I approached the driver's side.

Q How many people were in the car?

A Three.

And do you see those three people today who were in the car?

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Gaffney-direct

I do.

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	Α	Yes,
	Q	Now,
state	where	that pe
	A	Mr. C
in the	back	seat on
sittin	g on t	he pass
was the	e driv	er of th
	Q	Now, w
car?		

could you point out each individual and erson was in the car?

aceres in the blue suit, was sitting the passenger side. Mr. Lozano was enger side in the front. Mr. Liriano he auto.

what happened when you went up to the

I approached the driver and I asked him for his license and registration. I asked him to get out of the car, and all three of them got out of the car.

Describe how they got out; all from one side or different sides?

Mr. Lozano got out on the passenger side of the front, and Mr. Caceres got out on the passenger in the rear, and Mr. Liriano got out of the car on the driver's side.

Now, were any people around other than yourself and the defendants?

Yes, a crowd started to form.

And did you hear anything from the crowd?

As they were getting out, somebody in the crowd stated that the man in the back seat dropped a brown paper

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	Gaffney-direct
:	beg, and kids picked it up and ran.
:	Q Did you see any kids running with a brown
4	4 Paper bag?
5	A Yes, they were going down Broadway and they
6	turned going south on 38th Street.
7	Q And what did you do?
8	A I put the cuffs on Mr. Liriano and my partner,
9	Police Officer Hughs placed the cuffs on Mr. Caceres and
10	Mr. Lozano.
11	Q And what did you do if anything with the person
12	running with the bag?
13	A Once they had the handcuffs on him I proceeded
14	to run after the kids on 38th Street.
15	Q Did you say anything?
16	A Yes. I screamed and I told them in the bag
17	it's counterfeit money.
18	Q What happened?
19	A They dropped the bag.
20	Q Did you subsequently pick up the bag?
21	A Yes, I did.
22	Q And did you look inside the bag?
23	A Yes.
24	Q What was inside the bag?
25	A Five twenty dollar bills.

Gaffney-direct

MR. GOULD: If I may have the bag and five bills marked.

THE CLERK: One brown paper bag marked

Government's Exhibit 2 for identification. Five

twenty dollar bills marked Government's Exhibit 3 for

identification.

Q I show you what's Government 2 for identification; is that the bag that you found the money in?

A Yes, it is.

I show you Government's 3 for identification.

These are five twenty dollar bills, each one marked -- is
this your initial here?

A Yes.

Q And it says "in bag, in bag, in bag, in bag, in bag, in bag, in bag"; are these the five that you found in the bag?

A Yes.

Q Subsequent to finding the bag did you call for help?

A Yes, we called for assistance to take the defendants' bag to the station house.

Q Now, also did you ever open the door of the car? After you --

A Yes.

Q Did you see anything in the car?

	Gaffney-direct
Contract of the Contract of th	A Yes, we seen I seen a brown paper bag.
A CORP. CRACKERS	Q Did you subsequently look in that bag?
-	A Yes, I did.
Commission of the Contract of	Q And what did you find in that bag?
of the sales sales and	A Money, containing \$552.
Professional and Assession	MR. GOULD: Your Honor, this is money and
PERSONAL PROPERTY.	there is a lot of change in different packets. I
-	made this available to the defense
-	THE COURT: You are going to mark the bag?
	MR. GOULD: I dont think that would be
	necessary.
	THE COURT: I think you should mark as much
	as you can. Have the money if you want mark as
	much as you possibly can.
	MR. DEMOS: For the purpose of expeditiousn

of expeditiousness, I believe we'll concede that the currency that you are referring to is a total of 500 whatever number.

MR. GOULD: 52 in change.

MR. DEMOS: Just mark the bag with the contents.

THE COURT: All right. Mark the bag and contents as one exhibit.

THE CLERK: One bag and contents marked Government's Exhibit #6 for identification.

THE COURT: Don't get the exhibits spread out

Caffney-direct

too far. Take them and put them on the front over here.

THE CLERK: Two twenty dollar bills marked Government's Exhibit 4 for identification. Two twenty dollar bills, marked Government's Exhibit 5 for identification.

MR. GOULD: Number five is a fifty and a twenty and should be marked separately

Q I show you what has been marked for identification as Government's 6, this bag and these contents. Tell me if that's the bag and contents that you found in the front seat of the car?

A Yes, it is.

Q Now, while you were waiting for the radio car to come, did you have any conversation with any of the defendants?

A Yes, I asked Mr. Caceres where he got this money.

Now, did Mr. Caceres speak English?

A Yes, he did.

Q Did he speak English well?

A Yes.

Q Now, when you asked that of Mr. Caceres, did you warn him of his pertinent Miranda rights at the time?

Gaffney-direct No. I didn't. 2 What did Mr. Caceres reply if anything? 3 He said that he found the money in the back 4 seat of the cab -- of the cab that he drives. 5 Q Did a radio car eventually come and take 6 the defendants to the station house? 7 Yes. A After that occurred, did you subsequently go 9 10 back to another store? Yes, I did. 11 And who told you that there might have been 12 13 something passed at that store? Mr. Simmons. 14 MR. DEMOS: At this point I must object to 15 any statement which would be basically hearsay. MR. GOULD: I think the law is clear --17 THE COURT: For the purposes of this hearing I'll permit it. I won't consider anything which 19 properly should not be considered. 20 MR. DEMOS: Thank you, sir. 21 THE COURT: Surely. 22 Do you remember the name of that store offhand? 23 Q No, I don't but I do know the address. 24 A

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Q

Would you remember the name if I showed it

1	Gaffney-direct
2	to you Leo Peet's Grocery store, 1455 Broadway?
3	A Yes.
4	Q Did you speak to anybody in that store?
5	A Yes, I asked the man behind the counter if
6	anybody came in and cashed a twenty dollar bill.
7	Q And what happened?
8	A He said, "yes, somebody came in and cashed
9	two twenty dollar bills."
10	Q And did he hand you the bills?
11	A Yes, he did.
12	Q And did he tell you about what time they were
13	cashed?
14	A Yes.
15	Q What time, about what time did he say?
16	A Approximately a half hour to an hour ago.
17	THE CLERK: One fifty dollar bill number
18	B31985757 A, marked Government's Exhibit 7 for
19	identification.
20	Q I show you what is markedwithdrawn.
21	About what time was it now that he said, "They came
22	is about half hour or so ago?"
23	Approximately 7:20.
24	0 P.M.?
2	Yes.

Gaffney-dire t

I show you what has been marked Government's Exhibit 4 for identification; are these the bills that Mr. Caceres gave you from Leo Peets?

A Yes, it is.

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- Q And those are the initials of your partner Officer Hughs?
 - A Yes, it is.
 - Q Subsequent to going to --

MR. KRAMER: Was that a fifty dollar bill?

MR. GOULD: No.

THE DRT: Come over and look at it.

- Subseque & to seeing Mr. Caceres, did you return to the station house?
 - A Yes.
 - Q And about what time was this?
 - A I would say approximately 8:00.
- Now, did you see the defendants in the station house?
 - A Yes, I did.
- And at this point did you warn them of their Miranda rights?
 - A Yes, I did.
 - Q And did you have a card with you?
 - A Yes, I do.

Gaffney-direct

Q Does that card reflect the warnings that were given?

THE COURT: Let him take it out and read it.

Take it out and read what you said?

Tyou have a right to remain silent and refuse to answer questions, do you understand?" Subject replied "yes." Anything you do say may be used against you in a court of law, do you understand?" Subject replied "yes", "You have a right to consult an attorney before speaking to the police and to have him present now or in the future, do you understand?" Subject replied "yes", "if you cannot afford an attorney one will be provided for you without cost, do you understand?" Subject replied "yes", "If you do not have an attorney available to you you have the right to remain silent until you have one." Subject replied, "yes", Now that I have advised you of your rights, are you willing to answer questions without an attorney?" Subject said "yes".

THE COURT: Who was the subject?

Q The other two didn't speak English?

THE WITNESS: Mr. Caceres.

- A That's right.
- O There was nobody in the station house then who spoke Spanish?

1 Gaffney-direct 2 That's right. 3 Subsequent to giving these warnings you just 4 fold us about, did you do a body search of the defendants? Yes. We did. 6 And did you find anything? -- anything on 7 the defendants --8 A Yes, on Mr. Lozano, I found a twenty dollar 9 counterfeit bill. On Mr. Caceres, I found a counterfeit bill. 10 I found a fifty on Mr. Liriano. 11 I show you Government's 7; is that the bill 12 you found on Mr. Liriano? 13 A Yes. 14 Where did you find it? 15 In his wallet. 16 I show you what has been marked for identifi-17 cation as #5; is that the bill that you found on Mr. Caceres? 18 Yes, it is. 19 Q Now, subsequent to the warnings and the search, 20 did any other defendants make any statements to you? 21 22

A After I gave him the constitutional rights I asked him "where did you get this money?" And he said, he found it in the back seat of the cab that he drives, and that he kept it home with him for approximately two weeks, and that he asked a friend if it was good money and

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Gaffney-cross-Seltzer

1	is friend replied that it was counterfeit money.
2	Q Who is the "he"?
3	A I don't know. He just said "a friend"
4	Q When you said he said
5	A On Mr. Caceres.
6	Q Did there come a time when the Secret
7	agents came to the station house?
8	A Yes.
9	Q And did you subsequently release the
10	and the money to them?
11	A Yes, I did.
12	Q About what time did the Secret Service
13	arrive?
14	A Approximately 10:00.
15	Q What time did they leave?
16	A Approximately 12:00.
17	Q Now, during that two hours was anybod
18	to the defendants? That you were aware of?
19	A Not that I was aware of.
20	Q And you were in the process of turnin
21	evidence and handing over reports; is that correct?
22	A Yes.
23	MR. GOULD: Your Honor, I have no fur
24	questions.
25	THE COURT: All right. Cross-examina
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the attorncy for Mr. Caceres. CROSS-EXAMINATION BY MS. SELTZER: Officer Gaffney, where were you when Mr. Simmons first approached you? A Broadway and Steinway Street. What kind of patrol? A Poutine patrol. Were you in car or foot patrol? A Yes, I was in a radio car.	
9 Ms. SELTZER: O Officer Gaffney, where were you when Mr. Simmons first approached you? A Broadway and Steinway Street. What kind of patrol? A Poutine patrol. Were you in car or foot patrol? A Yes, I was in a radio car.	
Officer Gaffney, where were you when Mr. Simmons first approached you? A Broadway and Steinway Street. What kind of patrol? A Routine patrol. Were you in car or foot patrol? Yes, I was in a radio car.	
Simmons first approached you? A Broadway and Steinway Street. What kind of patrol? A Routine patrol. Were you in car or foot patrol? A Yes, I was in a radio car.	
A Broadway and Steinway Street. What kind of patrol? Routine patrol. Were you in car or foot patrol? Yes, I was in a radio car.	
What kind of patrol? What kind of patrol? Routine patrol. Were you in car or foot patrol? Yes, I was in a radio car.	
9 A Poutine patrol. 10 Q Were you in car or foot patrol? 11 A Yes, I was in a radio car.	
10 Q Were you in car or foot patrol? 11 A Yes, I was in a radio car.	
11 A Yes, I was in a radio car.	
10	
12 Q Were you alone?	
No, I was with Police Officer Hughs.	
14 Q And when Mr. Simmons approached you did	he
approach you in an automobile or on foot?	
A He approached me in his automobile.	
Q Just pulled up on the side?	
18 Yes.	
19 Q Did you get outside of your car at that	time?
20 A No.	
21 Q Had you ever met Mr. Simmons before?	
22 A No.	
Q Did you know who he was?	
24 A No.	
25 Q Did you know his name?	

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	Gaffney-cross- Seltzer
	A No.
	Q Did you know him from the neighborhood by
	fight?
!	A No.
(Q What did you say that Mr Simons
7	for say that Mr. Simmons said to
8	
9	the said there were three men passing counter
10	feit money on Broadway.
11	Q Did he say anything else?
	A He said I asked him where are they now?",
12	and he said that "They are on Broadway at a bakery shop"
13	and I asked him if we could follow them to that shop.
14	Q Did he tell you how he knew they were
15	passing counterfeit money?
16	A Not that I remember.
17	
18	any questions at that time?
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20	At that point you followed him in your car?
21	A Yes.
22	Q To the pizzaria?
	A Yes.
23	Q When you got to the pizzaria, do you recall
24	what time it was?
25	A I would say approximately 7:10.
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27 Gaffney-cross-Seltzer Now, at that time what did Mr. Simmons do? 1 Q 2 He stayed in his auto. A 3 Was he alone in his auto? 0 4 Yes. 5 What did you do? 6 I went inside the bakery shop. And that's when you had this conversation with 7 8 Joseph Parisa -- prior to it? 9 Yes. Prior to the time you entered that -- when 10 you entered the Lapatisaria, what did you do? 11 I asked the girl behind the counter if any-12 13 body came in and cashed a twenty dollar bill. 14 What did she say to you? 15 She said "yes". 16 What did you say to her? 0 17 I asked her, "Could I see the bill?" Did she indicate that there was only one 18 person that evening within a period of time that cashed a 19 20 twenty dollar bill? I asked her is somebody came in and cashed a 21 22 twenty dollar bill, and she gave me the bill. Did she indicate whether that person purchased 0 24 anything? 25

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1 Gaffney-cross-Seltzer 2 I didn't ask her. She didn't indicate to me. 3 Were there any other twenty dollar bills around? Did you go to the cash register? 4 5 A She did. 6 Was there only one twenty dollar bill in the 7 cash register, or only one? 8 I don't know. 9 What did she do? 10 She walked to the cash register, took out the 11 twenty dollar bill and handed it to me. 12 That's the only twenty dollar bill she took 13 out? 14 Yes. She took out one twenty dollar bill. 15 Q Did she indicate to you that she thought 16 nothing was wrong with that twenty dollar bill? 17 A No. 18 Q What did you do with the twenty dollar bill? 19 A I looked at the twenty dollar bill. I went across the street. I asked a person in the bank if this 20 was any good -- the bill. 21 22 Q What time was this? 23

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Couple of minutes after I went inside the store.

> Do you recall what bank that was? Q

Gaffney-cross-Seltzer A It's the Chase Manhattan Bank.

- Q Do you know the address of the bank?
- A I'm sorry, I don't.
- Q Well, location?
- A It's on Broadway between 32nd and 33rd Street.
- Now, is this area within the sector where you isually work?
 - A I don't usually work a particular sector.
- Were you previously familiar with that branch of Chase Manhattan Bank?
 - A No.

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- You don't happen to know their banking hours?
- A No.
- Q What day of the week was this?
 - A I believe it was a Friday.
 - Q Friday night?
- A Yes.
- 19 Q It was sometime after 7:00?
 - λ Yes.
- 21 O Do you happen to know what time the bank is 22 open til?
- 23 A No.
- 24 Q You would say it was somewhere between 7:00 25 and 7:30?

30 Gaffney-cross-Seltzer 2 Yes. 3 It was a teller or an official of the bank? 0 An official of the bank. 5 You did not take his name? 6 No. 7 Did you ask him what his position was in Q 8 the bank? 9 He said that he was a manager of the bank. 10 Q Were you in any way able to ascertain as to 1î whether this person would or would not know good money from 12 counterfeit money, any better than say, yourself? 13 A He said that he was the manager of the bank. 14 I would naturally assume that he knows, good money from bad 15 money. 16 Did he say anything to you that indicated that 17 he was any more qualified --18 THE COURT: Did he tell you that he was an 19 expert in counterfeit money and that he, by virtue 20 of his expertise knew that this was a counterfeit 21 bill? THE WITNESS: What had happened was that he 23 told me that he's the manager of the bank. I assumed 24 that he knows good money from bad money, and I took 25

him for his word.

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	Gaffney-cross-Seltzer
	THE COURT: You accepted what he said?
;	THE WITNESS: I accepted what he said.
4	O But you don't remember this person's name?
	A No.
6	2 Would you be able to locate him if you tried?
7	Yave you made any attempt to find out who he was?
8	Α Νο.
9	O Have you been back to that Chase Manhattan
10	Bank since the night of October 31?
11	A No.
12	Q Could you describe this person to us?
13	A I would say he's approximately 5'8", dark
14	rim glasses, about 180-190 pounds, black hair.
15	Q Is he Caucasian?
16	A Yes.
17	Q About how old is he?
18	A I would say approximately 35 to 40 years old.
19	
20	And that's the only time you ever met this bank manager?
21	A. Yes.
22	
23	Now, you then left the bank with that bill; is that correct?
24	A Yes.
25	
	2 And what did you do then?

Gaffney-cross-Seltzer

A I went over to Mr. Simmons, and I asked him his name, his address, telephone number, and I asked if any more information that he could give me about the men that were passing the money.

- Q Did he give you any additional information?
- A Yes. He said they were riding in a green Chrysler, and he gave me the registration number of the car.
 - Q You wrote that down?
 - A Yes.

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- Q The registration or the license?
- A The plate number of the car.
- Q And did he leave?
- A Yes. I told him to go home and somebody will get in contact with him later on.
 - Q What did you do?
- A I got in my car and I proceeded eastbound on Broadway.
 - Q How far -- how long did you go until you saw --
 - A Approximately -- it was six blocks.
 - Q Who was in the green Chrysler when you saw it?
 - A The defendants, sitting at the table.
 - Q All three of them?
 - A Yes.
 - Were they parked in front of any stores?

1	33
	Gaffney-cross-Seltzer
2	A They were going into a parked position when
3	observed them.
4	Q Parking the car?
5	A Yes, they were parking the car.
6	Q When you approached this Chrysler, did your
7	partner go with you?
8	A Yes, he did.
9	Q Did you have guns out?
10	A I don't remember if I had my gun out. I'm
11	ruite sure that I had my gun in an unlocked position.
13	How did you approach the car? Did you approach
14	from one side and the other officer from another?
1.4	A I approached the vehicle on the

A I approached the vehicle on the driver's side of the car.

Q Was it Liriano that was driving?

A Yes.

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Q And I take it what happened -- the three people exited the car at your orders?

A Yes.

Now, you said that there was a hag in the car that was dropped, something to that effect; is that correct?

A Yes.

Q Did you see that bag being dropped?

A No, I didn't.

1	Gaffney-cross-Seltzer
2	Q Did you see that bag being picked up?
3	A No, I didn't.
4	O So all you heard somebody in the crowd yell?
5	A Yes.
6	Q Did you hear more than one person in the crowd
7	yell?
8	A Not that I remember. That just stuck out in
9	my mind.
10	Q How close were you from the door of the
11	car to the door of the car?
12	λ I was on the driver's side of the car.
13	Mr. Caceres got out on the passenger side.
14	And was the other officer I forget his name
15	A Hughs.
16	Q Was he on the passenger side of the car?
17	A No, he was in the front of the car. He wasn't
18	on the passenger side. I got out of my car and proceeded
19	towards the driver of the car. He got out and proceeded
20	towards the front of the car.
21	Q Let me ask you this. Was the car parked in
22	a situation so that the passenger so that the driver's
23	side on the car was closest to the sidewalk?
24	A No.
25	Q Passenger side was this a one-way street?

	Gaffney-cross-Seltzer
	A Two-way street.
	Q Parked on the right side?
	A Parked on the right side going eastbound.
	So, you were standing in the street?
	A Yes.
	And Hughs was standing in front of the car?
{	A That's correct.
9	
10	got out the passenger side?
11	
12	as I got out or my car.
13	yes and why it staited to form?
14	
15	
16	assume so, yes.
17	Q Could you give us an idea how many people then were?
18	
19	A No, I can't. I had my eyes basically on the car itself.
20	
21	beople, twenty people, fifty
22	people, less than ten, more than ten?
23	A I really don't know. I had my eyes basically on the people inside the car.
24	
25	Now, you testified that some kids allegedly or speedily picked up a bag?
	Troudly proked up a bag?

Gaffney-cross-Seltzer 1 Yes. Did you see them pick up a bag? 2 2 Q 3 110. A 4 Did you see them run? 0 5 No, I didn't. 24 Was anything -- withdrawn. 6 You didn't see them pick up the bag and you didn't 7 8 see them run away? 9 No, I didn't. 10 But you chased them? 11 Yes. How did you know where to chase them? 12 I saw them -- I saw the kids running down 13 Broadway, making a left going south on 38th Street. 14 There was a kid or did you say "kids?" 15 16 I said "kids." 17 About how many kids? I would say approximately five or six. 18 When was it that you saw this? A 19 When they were turning the corner going south 0 20 A 21 on 39th Street. Had you seen these kids run from the car? 22 23 You just saw them sometime after. What perio A 24 Q 25

GAffney-cross-Seltzer

if time after was it that you saw these running children?

A Somebody in the crowd informed me that kids fust picked up a brown paper bag and started to run. When looked in that direction I saw the kids turn the corner.

Q How much later or after that did you begin to thase them?

A I placed handcuffs on Mr. Liriano and Mr. Caceres and Mr. Lozano. Once they were handcuffed I proceeded after the kids.

Q Is that a minute later, five minutes later -A I would say approximately 30 seconds to a
minute.

Q How far from the car were they at the time that you began to chase them?

A I would say approximately fifty feet.

Q Had they turned the corner yet?

A As they were running -- as I saw them they were just about turning the corner.

Q And you ran and turned the corner?

A And I ran.

Q How much further down the block did you finally catch up with them?

A They dropped the money approximately 200 feet from the corner of 38th Street and Broadway.

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1		Gaffney-cross-Seltzer
2	Q	Did they keep running?
3	A	Yes.
4	Q	You never got hold of the kids?
5	A	No.
6	Q	You never spoke to them?
7	Α .	No.
8	Q	So you personally never saw you picked up
9	the bag that	had been dropped by some kids how many blocks
10	from the auto	mobile?
11	A	I would say approximately 200 feet from the
12	corner of 38t	th Street and Broadway, approximately 50 to 60
13	feet from the car.	
14	Q	And you never yourself saw that bag being
15	dropped or th	at bag being picked up by those kids?
16	A	No.
17	Q	You saw the kids drop the bag?
18	А	Yes.
19	٥	You never ascertained the names or identities
20	of these kids	3?
21	A	Yes.
22	Q	You never saw them start running?
23	A	No, I didn't.
24	٥	Was it the bag that these five counterfeit
25	bills were fo	ound?

Gaffney-cross-Seltzer

2	A	Yes, that's	correct.
3	Q	By the way,	do you know if any fingerprints
4	vere ever		of these bills that you found?

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- A No fingerprints at all.
- Q Then you went back to the car?
- A Yes.
- Q With the money?
- A Yes.
- Q What was Officer Hughes doing at that time?
- A He was safeguarding the defendants.
- Q What does that mean?
- A He was holding them.
- Q Inside the car or outside the car?
- A Standing outside the car.
- Q More people gathered around at that time?
- A Yes.
- Q They were standing outside the car and Hughes was outside the car?
 - A Yes, that's correct.
- Q And when was it that you found this brown bag; was it right there, the second brown bag?
- A The brown bag inside the car -- we called for radio car to come and pick up our defendants to take them back to the precinct. We called for a second car to take

Gaffney-cross-Seltzer

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the car back to the precinct; once they were taken back to the precinct we looked in the car and I saw the brown paper bag containing U.S. currency.

Q Anything else in that brown paper bag besides the U.S. currency?

A No.

Q By the way, I noticed that these bills are bound. Were they bound at that time when you found the bags?

A No, they were -- for the most part when I counted the money they were in lots of 18 dollar bills; five tens, and three ones.

Q Were they just thrown in the bag?

A Just thrown in the bag.

Q I know piles of pennies and dimes -- they were in that bag?

A Yes.

O They weren't wrapped up?

A No.

Q Who was it that did all this wrapping?

A I don't know.

Q It wasn't you?

A No.

Q Did you count the money at that time?

A Yes.

		41
1		Gaffney-cross-Seltzer
2	Q At the	scene?
3	A In the	station house.
4	Q At that	time, did you know whether it was goo
5	or bad money?	
6	A It 1003	ed good to me.
7	Q When yo	ou went back to the precinct you said
8	that you gave Mr. Cad	ceres his rights?
9	A Yes.	
10	Q Was the	ere anyone else present at that time?
11	A The def	endant and my partner.
12	Q Hughes?	
13	A Yes.	
14	Q You had	a conversation with Mr. Caceres; is
15	that correct?	
16	A Yes.	
17	Q You nev	er reduced the contents of that con-
18	versation to writing	at that time and ask him to sign it?
19	A No, I d	idn't write down any of the conversa-
20	tion.	
21	1 Q And you	didn't have a conversation with the
22	other two defendants?	
23	A No.	
24	. THE COU	RT: Is that the report he made?
25	MS. SEL	TZER: Yes.

Gaffney-cross-Seltzer

MR. GOULD: It's not a report. It's a statement which we turned over to defense counsel just written by Officer Gaffney. It's not an official report.

- Now, in this discussion that you had -- you had a discussion with Mr. Caceres at this time?
 - A At this point --
 - Q At the precinct.
 - A Yes.

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- Mr. Caceres has fluency in English?
- A Yes.
- Q Tell me again what was maid?
- A After I gave him the constitutional rights,

 I asked him where he got this money. He said he found it

 in the back seat of the cab that he drives. He brought it

 home, he kept it at home for approximately two weeks, he

 asked a friend about the money and his friend said that the

 money was counterfeit.
 - Q In your report you said the bills were bad?
 - A Bad.
 - Q Did he use the bad bills?
 - A In substance --
 - Q Here you use the word "bad"?
 - A Yes.

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Gaffney-cross-Seltzer
Q Shall I show you your report?
MR. GOULD: It says that.
2 It doesn't say anywhere in this report
Do you recall exactly what the words he used did
's use the word"counterfeit", or did he say his friends said
the money was bad?
A I believe he said "bad".
MS. SELTZER: I have no further questions.
THE COURT: Maybe we will adjourn now for
lunch and we will resume at 2:00.
Until he gets back to the stand please do not
discuss your testimony with anyone, okay.
(after luncheon recess)
MS. SELTZER: May I ask a few more questions
of this witness?
THE COURT: You may ask as many as you wish.
MS. SELTZER: Thank you, your Honor.
Officer, I would like to ask you several ques-
tions in regard to your going into the La Pattisaria,
is that what it's called?
A Yes.
What information had you received from this
Mr. Simmons in regard to this particular Patissaria?
A I asked Mr. Simmons where they are now, and

Gaffney-cross-Seltzer

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said the last time he saw them was at a bakery shop on roadway. That's when I asked if we could follow them back to that place.

Did he specifically take you to that bakery?

A Yes, he pointed it right out. He stopped the car and pointed it out and we went inside.

And you went inside?

Yes.

When you asked the woman in the bakery if anyone had cashed any twenty dollar bills, she gave you this particular twenty dollar bill, and did you ask her for a description of the person or persons who had passed that twenty dollar bill?

> A No.

Did she tell you who had passed that twenty dollar bill?

No.

Did she give you any information whether it was a woman or a man or Hispanic, a white or anything at all?

I don't remember.

MS. SELTZER: I have no further questions.

THE COURT: All right. Cross-examination,

Mr. Demos.

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1	Gaffney-cross-Demos
2	TROSS-EXAMINATION
3	iy MR. DEMOS:
4	Q Officer Gaffney, did you ever have any kind
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7	A Not at all.
8	Q You never saw him, met him or anything like
9	it?
10	A That's correct.
11	Q Now, on that particular date, at approximately
12	7:00 P.M. is it correct that you were engaged in another
13	event in the immediate location?
14	A That's correct.
15	Q And what were you doing at that time?
16	A Making out an accident report.
17	Q And the accident report involved two vehicles;
18	is that correct?
19	A No. It involved one vehicle.
20	Q And a pedestrian?
21	A No, a sewer.
22	Q Were you writing a report at the time of the
23	that you were there?
24	A My partner, Police Officer Hughes was writing
25	out the report. I was the operator.

What did I say to him?

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1	Gaffney-cross-Demos
2	Q Yes, sir.
3	A I asked him where they were now.
4	Q Did he tell you where they were?
5	A Yes.
6	Q Did he describe them to you?
7	A He said they were three male Spanish
8	Q Did he say that they were young, old, short,
9	tall; did he give you any kind of a description?
10	A No.
11	Q Did you ask him how he knew that they were
12	passing counterfeit bills?
13	A No.
14	Q You made no inquiry as to how he knew they
15	were passing counterfeit bills?
16	A No, I didnt.
17	Q Well, was your partner still busy writing
18	A He just finished, and the reason why we went
19	back to the bakery shop
20	Q I didn't ask you that Officer. Was your
21	partner still busy writing the accident report?
22	A He just finished up.

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you when you were talking to Mr. Simmons?

Yes, he was.

Q Was your partner sitting in the vehicle with

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1 Gaffney-cross-Demos 2 And did he make any comment or join in the 3 conversation with Mr. Simmons and yourself? 4 He said "Okay, let's go to the bakery shop". 5 And that's all that you did? 6 Yes. 7 All right. When you got to the bakery shop, 8 where was Mr. Simmons? 9 He stopped the car on the corner of 33 and A 10 Broadway. 11 All right. When you got out of your vehicle +-Q 12 did Mr. Simmons get out of his vehicle? 13 No. 14 You got out of your vehicle? 15 Yes. 16 And you went into the bakery shop? 17 Yes. 18 And there you spoke to a lady by the name of 19 Josephine Pollizi? 20 A Yes. 21 When you went into the shop what was the first thing you said to her? 22 23 I asked her if anybody came in here and cashed a twenty dollar bill. 24 25 Did you ask her in terms of time when this Q

Gaffney-cross-Demos

event is alleged to have occurred?

A No.

Q Did you ask her whether or not she had cashed eny twenty dollar bills at all during that day?

A I didn't ask her that, no.

Q You just asked her one single comment?

A Yes.

Q Did you make any comment with regard to the authenticity of a particular bill?

A When she gave me the bill, my partner and myself was there and we looked at the bill and we decided to bring it across the street to the bank.

The bill that she handed you did that appear warn-over -- in other words, a good bill?

A It was a brand new bill, and that brought attention to it right away, and that's why I brought it over to the bank.

Q But did it appear to be a good bill when you took it?

bills -- I think the bill counterfeit anyway. If
we go into that -- Just ask him what he did, what he
did. He's not an expert, so whether of not that bill
was counterfeit we know it is; that's beside the point.

1 Gaffney-cross-Demos MR. DEMOS: I think it goes to another aspect 3 of the problem --THE COURT: All he did -- he took it and went 5 over to the bank and the man told him this bill is no 6 good. We're through this. We have been through this 7 twice. 8 Did the manager place the bill under an 9 ultra-violet light of any kind? 10 MR. GOULD: Is that if he knows? 11 Well, you went into the bank and you said 12 you spoke to the manager, and you handed him the bill; 13 did he do anything with the bill other than make a physical 14 observation? 15 No. A 16 He just looked at the bill and that's it --17 gave it back to you? 18 Gave it right back. 19 When did you put your initials on that bill? 20 Inside the station house. 21 How long after you had been in the bank? 22 Approximately an hour and a half. 23 Hour and a half later. Where did you put 24 the bill when you left the bank? 25 Police Officer Hughes held the bill.

Gaffney-cross-Demos

You either don't understand my question-That particular bill that you had at the bank when you left
the bank after showing it to the manager, what did you do
with it?

I gave it to my partner, Police Officer Hughes.

Q And what did he do with it?

A lie held it.

Q Where did he put it?

A I don't know.

Q Did he put it in his pocket?

A I would assume so.

Do you know whether Officer Hughes had other bills in his pocket at that time?

A I don't know.

Do you know whether he put it in his right pocket or left pocket?

A I dont know.

THE COURT: Just for my information, does this go to the issue of whether or not these police officers concocted this whole thing; is that what your questions are? Do they go to that question just for the Court's information?

MR. DEMOS: The thrust of my cross-examination of this witness will be --

Gaffney-cross-Demos

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THE COURT: These last few questions,
just for my information, the last few questions -to what issue are you addressing yourself? To the
fact that these officers may have switched bills
something?

MR. DEMOS: I don't know what may have occurred sir by having a bill an hour and a half later in somebody else's custody.

THE COURT: I was wondering what area you were seeking at.

MR. DEMOS: I'm raising the question, I don't know what happened to that particular bill for an hour and a half. I can't make any specific assertions

THE COURT: Do we have an hour and a half with it? We are past the hour and a half.

MR. DLMOS: We are in the station house.

THE COURT: All right. Go right ahead.

I want to take you back Officer, to a point where after you left the bakery you told us on direct examination of Mr. Gould, that you went looking for this particular vehicle?

A Yes.

You say you spotted the car approximately six blocks away in the vicinity; is that correct?

A That's correct.

And the car was in the process of either

1	Gaffney-cross-Demos
2	being parked or had been parked?
3	A That's correct.
4	Q When you approached the vehicle, was your car
5	hoving?
6	A My car was moving eastbound on Broadway. I
7	observed the car going into a parked position on Broadway.
8	I pulled in front of that car. I got out of the car.
9	Q When you pulled in front of the car, did you
10	pull in diagonally in front of the car to prevent it from
11	leaving, or did you park your car in a normal fashion,
12	parallel to the curb?
13	MR. GOULD: I'll concede that the gentlemen
14	were under arrest, if that's what this is getting at.
15	They were under arrest as soon as they were approached
16	by the police officers, if that's what the thrust
17	of the cross-examination is.
18	THE COURT: Let him go.
19	Q You blocked the path of that vehicle from
20	leaving; isn't that correct Officer?
21	A Yes.
22	2 And you were the driver of that vehicle?
23	Were you the driver of that vehicle?
24	A Yes, I was.
25	Q And when you got out of the car, meaning your

Gaffney-cross-Demos car, you told us that you approached the parked vehicle on the driver's side; is that correct?

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Q What was the first words that you said to the occupants of that vehicle?

- A "Your license and registration, please."
- Q And you spoke to Mr. Caceres?

Yes, that's correct.

- A No, I spoke --
- Q I'm sorry. Mr. Liriano?
- A Yes.
- Q Did he give you his license and registration?
- A No.
- Q Did you have any other conversation with him?
- A I said, "Get out of the car."
- And when he got out of the car, what did you say then? If anything?
 - A I placed -- I gave them a preliminary frisk.
- Q Before you gave them a preliminary frisk, did you place them under arrest, sir?
 - A Yes.
- Q Did you tell them at that point what they were being held for?
 - A No, I didn't.
 - Q Had you determined already in your mind why

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1	Gaffney-cross-Demos
2	you had placed them under arrest, Officer?
3	A Yes.
4	2 What was the basis upon which you placed them
5	under arrest?
6	A Based on a complaint from Mr. Simmons.
7	Q Mr. Simmons. Okay let's go
8	back to Mr. Simmons again.
9	Did Mr. Simmons when he first approached you in his
10	car, show you any kind of currency at all?
11	A Mr. Simmons, no.
12	Q Did he say that he was a recipient of a bit
13	of currency, earlier that day?
14	A No, not that I remember.
15	So that you just had a bald statement by a
16	Mr. Simmons that some men were passing counterfeit bills?
17	A Plus the counterfeit twenty dollar bill in my
18	hand.
19	Q The counterfeit twenty dollar bill. Did you
20	know that this was passed by these defendants?
21	A Based on the information that was given to me
22	by Mr. Simmons, yes.
23	Q Now, will you please state to this Court on
24	what basis or how you claim that Mr. Simmons told you that
28	these men had passed the bill?

Gaffney-cross-Demos

MR. GOULD: I object to the form of the question, but in addition, I believe he's now beginning to argue matters of law with the Officer. The Officer testifies to the fact --

THE COURT: No, if the Officer can answer the question, I will prompt him to answer to the extent that he can.

Q Did Mr. Simmons --

THE COURT: You asked a question. You want to ask another question, withdraw it.

- Q Answer the question, please.
- A Repeat the question, please.

THE COURT: Repeat the question.

THE WITNESS: Mr. Simmons, when he came alongside of me, gave me a description of these men that were. passing the money.

- Now, what was the description that he gave your
- A Three male Spanish.
- Q Did he give you any other identification, other than three male Spanish?
 - A Not that I remember.
 - Did he tell you that they were black or white?
 - A No, he did not say.

THE COURT: Did he give you a list number?

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The large bag?

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Sitting up and open, and it had the money in Q

it?

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Yes.

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MR. GOULD: Number 6.

THE COURT: That is Government's Exhibit 6

for identification.

Q Did you ever see the small paper bag, that is Government's Exhibit Number 2?

A I seen it on 38th Street, at approximately 200 feet from 38th Street and Broadway.

Q How much time elapsed between the time that you saw the large paper bag that you identified, which is Government's Exhibit 6, and the time you saw this Government's Exhibit 2, the small paper bag several blocks away from where the scene of where you stopped these defendants?

Approximately five minutes.

Did you see the bag on the person of any of occupants of the vehicle?

Which bag are you talking about?

0 The small bag, Government's Exhibit 2.

THE COURT: We have been through that. He never saw them touch it or have it, that bag --Ms. Seltzer went all through that. I am aware that unless you have some other area, she has covered that fully.

Now, did you read the defendants their rights

it the time --

THE COURT: Only one. He read rights to Caceres. Your man spoke Spanish.

Q At the time that you arrested these people butside of their vehicle --

THE COURT: Did you read them the rights at that point?

THE WITNESS: Not outside the vehicle.

Q The first time that you read them their rights is when they appeared sometime later in the precinct house.

THE COURT: And he did not do the Spanish ones, he only did Caceres. Your client, he did not do. Did you do his client?

THE WITNESS: No.

MR. DEMOS: No further questions, Your Honor.

THE COURT: Anything further? Cross-examination

by the attorney for Mr. Liriano, Mr. Kramer.

(continued)

Gaffney-cross-Kramer

CROSS-EXAMINATION BY

MR. KRAMER:

Officer Gaffney, do you remember making a written statement on October 31, stating that when Mr. Simmons approached you, he had said that his partner had just received a twenty dollar bill that was counterfeit?

A I did not make any written statement.

I show you this piece of paper and ask you if this is you signature on the bottom copy of the statement given to me by the U.S. Attorneys Office.

A Yes, this was a statement made by me to the Becret Service.

Q And you read this statement over and you signed it after making this statement, is that correct?

A Yes.

Does it refresh your recollection if you said "Simmons told us that the salesman passed a counterfait bill on his partner earlier that same day." ? Does it refresh your recollection?

A Yes.

Q Making that statement?

A Yes, it does.

Q Am I not correct in stating that you did not ask Mr. Simmons to see that twenty dollar bill, is it not

	61
	Gaffney-cross-Kramer
	2 correct?
	A That is correct.
	Q And Mr. Simmons never showed you that twenty
,	5 dollar bill?
	A That's correct.
,	O Officer Gaffney, the bank that you went into,
8	was it during working hours?
9	A Yes.
10	MR. GOULD: Definition of what you mean by
11	working hours.
12	Q Was it open to the public, were there other
±3	depositors or people transacting business in the bank?
14	A I don't remember.
15	Was the door open to the bank?
16	A Yes.
17	Q Can you be more specific as to the time that
18	you went into the bank?
19	A I would say approximately twenty after seven.
20	2 Twenty after seven?
21	A Yes.
22	Q And is that because you know you were through
23	with the accident report with the previous accident to be
24	about 7:00 , and that is when Mr. Simmons first approached
25	you?
11	

Gaffney-cross-Kramer

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Yes, well, we responded that particular time to the accident and then Mr. Simmons came alongside and we followed Mr. Simmons. It is approximately twenty after seven.

5

4

Seven thirty? Around that area?

7

6

Yes.

8

Are you familiar with that area, that is your beat, isn't it?

10

9

A Yes.

third Street, on Broadway.

11

Could you tell me where 32-12 Broadway is?

12

It is between Thirty-second Street and Thirty-

13

Q Is that the bank you went into?

14 15

A The bank is on Broadway between Thirty-second

16

and Thirty-third Street.

17

Q Between 32-12 and not the one 25-14, that would be seven blocks away?

18

Yes.

20

19

Now, Officer Gaffney, you are familiar with the penal law of the State of New York concerning counterfeit

22

,

crimes, are you not?

or not?

23

THE COURT: What has that got to do with this, whether he is familiar or not, whether you give me the law

	63
	Gaffney-cross-Kramer
	MR KRAMER: My whole basis goes to the probable
	3 cause on initial arrest.
	THE COURT: Ask him questions on probable cause.
	MR GOULD: Whether he knows it is illegal to
•	dc it.
,	THE COURT: Ask him questions on probable
8	
9	
10	
11	
12	
13	Q Officer Gaffney, immediately upon driving up
14	hext to the car that these three individuals were in, they
15	were, in your opinion, under arrest, isn't that correct?
16	A Yes, J felt they just committed a crime.
17	Q And you base this opinion on the fact that you
18	had one allegedly counterfeit twenty dollar bill in your
19	Possession?
20	A That is correct.
21	Q Not knowing who passed that bill, is that
22	correct?
23	MR. GOULD: Objection to the form, Your Honor
24	THE COURT: Well
	MR. GOULD: Objection to the form, Your Honor THE COURT: Well

MR. GOULD: If he wants to * k?

Gaffney-cross-Eramer

THE COURT: It is a fact that he did not know.

I will accept that, that is in the record.

MR. GOULD: I would object to the characterization, if he did not. He obviously thought he knew.

THE COURT: Whatever he felt his knowledge was,
I will accept it under the circumstances. The only
thing I am saying we know what the facts are at this
point.

MR. KRAMER: Yes, Your Monor.

THE COURT: We know what the facts are.

Officer Gaffney, I'm not very sure of certain facts concerning brown paper bags, you made a statement to the Secret Service Agents that -- you stated to the Secret Service Agents that you and your partner had found five counterfeit twenty dollar bills and these were found in a paper sack in the floorboards of the car, is that correct?

MR. GOULD: I'll object. He's now reading from the statement that Officer Gaffney -- you are telling him it is his statement.

THE COURT: If that is not his statement, then
I will sustain the objection. If it is his statement,
you can ask him the question. But I will sustain
the objection -- you can show him his statement and
anything you want to ask him as to that, I will con-

Gaffney-cross-Kramer

sider.

Q Could you just refresh my memory as to when you found this paper bag in question?

A When I stopped the auto, I asked him to get out of the car. Someone in the crowd told me that -- kids picked up a brown paper bag and ran. I observed the kids running. I placed -- put the handcuffs on the defendants and I ran after the kids. Approximately two hundred feet from 38th Street and Broadway. I picked up the bag. I looked inside the bag and I saw five twenty dollar bills.

A That is one paper bag. Now, did that contain and that was the first time you saw it is when the children dropped the bag?

A Yes.

Q That is the first time you saw that one bag?

A That is correct.

Q When did you find a second bag?

A When I went back to the auto. Police Officer Hughes was guarding the prisoners. I come back, put the prisoners inside the radio car to take them back to the station house. I looked in the car. I saw a brown paper bag containing U. S. currency.

Now that is the second brown paper bac?

A Yes.

II		
1		Gaffney-cross-Kramer
2	Q	And this bag then was found in the car, is
3	that correct?	
4	Α	Yes.
5	Q	Pursuant to your search of the car?
6	λ	That is correct.
7		MR. GOULD: That wasn't the testimony.
8		THE COURT: The objection is sustained.
9	Do not	answer the question. Your next question,
10	please	
11	٥	Did you search that car?
12	A	No, I did not.
13	Q	What were the circumstances of your finding
14	that brown pa	per bag.
15	A	The brown paper bag, I saw it in the front
16	seat of the o	ear.
17	Q	Where was it?
18	A	Number 2, in between the driver and the
19	pæssenger sid	ie would be right in the middle.
20	Q	On the seat or on the floor?
21	A	On the seat.
22	Q	So, in other words, when you looked into
23	that car, that	t was in plain view on the seat?
24	A	Yes.
25	0	Did you ever make a statement to one of the

Gaffney-cross-Kramer

Secret Service Agents that you found the brown paper bag in a floorboard of a car?

A Not that I recall.

Did you ever make a statement to an agent of the Federal Government that you found one paper bag in the floorboards of the car which contained five twenty dollar bills?

A No.

Q And did you ever make a statement to an agent that you found another paper bag containing U. S. currency in the floorboards of that car?

A I found the money containing U. S. currency in the front seat of the car.

Q I am asking you -- I understand that. But did
you ever make a statement to an agent that you found the
money in the floorboards of a car?

A Not that I recall.

Q And it was in this second paper bag that had the valid U.S. currency in it?

A Yes.

When -- there came a time you testified that two other bills were found in the car, is that correct?

One fifty dellar bill and one twenty dollar bill, both in the ashtray is that correct?

1	Gaffney-cross-Eramer
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4	
5	THE COURT. The searched the car?
6	MR. GOULD: Agent Smith. It was found on the
7	person.
8	THE COURT: Either on the person or in the
9	car when it was searched. Did you search the car?
10	THE WITNESS: No I did not search the car.
11	You conducted a search of the defendant
12	biriano, is that correct?
1.3	A Yes.
14	Q And that was after he was arrested?
15	A Yes, correct.
16	MR. KRAMER: I have no further questions.
17	THE COURT: Any, Mr. Gould?
18	MR. GOULD: Just one or two.
19	REDIRECT-EXAMINATION
20	BY MR. GOULD:
21	Q I show you Government's Exhibit 1 for identi-
22	fication. Was the IIII given to you by Josephine Pollizi
23	bright green?
24	A Yes.
25	Q Was Jackson all faded out?
	- Judea Out?

	1		69
	1		Gaffney-redirect-Gould
	2	A	Yes.
	3	Q	And you are certain that is the bill she
	4	gave you?	the bill she
,	5	Λ	Yes.
	6	Q	Now, just to straighten things out, Mr. Simmo
	7	told you the	at somebody had passed a bad bill?
	8	A	
	9		Yes.
		Q	He also gave you the list plates number?
10	0	A	Yes.
11	1	Q	He gave you his name and address?
12	2	A	Yes, sir.
13	3	Q	And he also told you that he saw them in other
14		stores? Is	that correct?
15		Α	That is correct.
16		2	LaPatisseria?
17		A	Yes.
18		Q	and then he led you to LaPatisseria store?
19	A CANADA	A	Yes.
20		Q	This was not an amonymous informant who just
21		gave you a ti	p and hung up?
22		A	No.
23			MS. SELTZER: Objection.
24			THE COURT: I will accept it. Objection
25		overrul	ed.

MR. GOULD: I have no more questions. 1 MS.SELTZER: You had never met this man before? 2 THE COURT: You may recross. 3 MR. GOULD: I withdraw that last question. 4 I'll argue that. 5 MR. KRAMER: It was asked and answered. 6 7 THE COURT: You may have recross. 8 MR.GOULD: This person, Mr. Simmons, even though you did not know him, it was not a person 9 who just called up, did not leave his name and hung 10 11 up? 12 That is correct. It wasn't somebody who came out from a crowd 13 and told you somebody passed counterfeit and just disappeared 14 into the night? 15 16 No. 17 THE COURT: Yes, Ms. Seltzer? RECROSS-EXAMINATION 18 BY MS. SELTZER: 19 @ Mr. Simmons, you said, was somebody who you 20 never spoke to before ? 21 22 That's correct. He said his partner just received a twenty 23 dollar bill that was counterfeit? 24

That's correct.

ď.

Gaffney-recross-Seltzer Did he tell you his partner received the 3 twenty dollar bill earlier that day and it was also counterfeit? 5 Not that I remember, no. 6 There was only one bad twenty dollar bill 7 passed? 8 MR. GOULD: May I ask the good faith basis on 9 that question? 10 THE COURT: This is not the same bill that is 11 here or is it a different bill? 12 MR. KRAMER: The bill in question is a bill 13 which is not before the Court and will not be before 14 the Court. 15 THE COURT: Mr. Simmons bill? 16 MR. KRAMER: That is correct. 17 THE COURT: Ms. Seltzer, Mr. Simmons bill doesn 18 not appear to be here at the present time. 19 MR. GOULD: I believe it was just one bill. MS. SELTZER: Were you told that the bill was 20 21 passed on Simmons that evening or earlier in the day? Repeat the question, please. THE COURT: Were you told the bill had been 23 passed to Mr. Simmons that evening or earlier in the 24 25 day. That is her question.

Gaffney-recross-Seltzer

THE WITNESS: That evening, yes.

I show you this statement that you signed october 31. It says here that Simmons told us that these same men passed, a counterfeit bill on his partner earlier that same day.

A I would assume it meant that evening. I did not write this, as I was giving the statement.

> THE COURT: He means that evening. You may ask the next question. You may argue that, but it doesn't mean it is wrong. It means that is the way it was written. He said it was that evening. It does not mean it is wrong, Ms. Seltzer.

MR. GOULD: That is not necessarily impeaching, at all.

THE COURT: That day, that day or that night.

In any event, you never did receive the alleged counterfeit bill from Mr. Simmons?

A That's correct.

So it was purely on his word that you were assuming that it was in fact, a counterfeit bill?

A I went back to the bakery shop to verify his story.

THE COURT: His action after that was what Mr. Simmons had told him. I will accept that as what

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faffney-recross-Seltzer

he did.

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3ut you never saw that particular bill that had been passed to Mr. Simmons?

A The bill isn't here. He did not see the bill.

It hasn't been lost since then?

A No.

Did Mr. Simmons tell you what happened to the bill?

A I don't know. As far as what happened to the bill, I do not know.

Did you ever ask him what happened to the bill?

A Not myself, no.

MS. SELTEER: No further questions.

THE COURT: Recross, Mr. Demos.

MR. DEMOS: No questions.

THE COURT: Recross, Mr. Kramer.

MR. KRAMER: No questions.

RECROSS-ENAMINATION

BY MR. DEMOS:

Mr. Gaffney, when you went into Mrs. Pollizi's, the lady that you got that twenty dollar bill that you told us before, did she give you a description of an individual or individuals?

MR. GOULD: It is asked and answered.

1	Gaffney-recross-Demos
2	THE COURT: It has been asked and answered.
3	Q Is that your answer, that
4	MR. GOULD: His statement was he did not re-
5	member.
6	Q You do not know? I show you your statement
7	you made on October 31, 1975, and ask you did you read this
8	where we said, starting with the words "we"?
9	MR. GOULD: I am reading from page one of his
10	statement, which says, "we spoke with Josephine Pollizi
11	at this store, who showed us the bill the suspects
12	had given her".
13	THE COURT: Ask him what he means by that.
14	He said he did not write it. Ask him if he can inter-
15	pret that.
16	Q You read this statement, sir, before you
17	signed it, I assume, is that correct?
18	A Yes.
19	Q Was this statement true at that time?
20	A At that time, yes.
21	Q And is there any change in you testimony now
22	with regard to that?
23	MR GOULD: Objection as to form.
24	THE COURT: He has not changed anything. You
25	better ask the questions.

Gaffney-recross-Demos

Q Did Mrs. Pollizi tell you that there was one person that passed a bill or two persons or three persons?

A One person.

Q Did she describe this one person to you?

A I do not is ember-

THE COURT: That's it. For interpretation, you could argue what you want, but that is his answer and it is consistent with what he said. You could argue and tell the Court anything.

MR. DEMOS: All right. Thank you, sir.

THE COURT: Surely. Any further questions from Officer Gaffney?

MS. SELTZER: No.

MR. KRAMER: No. .

THE COURT: Thank you.

MR. GOULD: Is it your policy to have these marked into evidence?

THE COURT: If you wish.

MR. GOULD: It may be difficult to get the tags off for trial.

THE COURT: You could offer them if you wish.

MR. GOULD: I would like the exhibits that have been marked for identification deemed in evidence, but without marking them, but it may be

dif

different during the crial.

of defendant Lozano, marking any of these items into evidence, since there is nothing in the hearing that connects Mr. Lozano to these particular items by way-

THE COURT: That's a legal defense counselor and until that is proven the Court will make a disposition at this point as to the rote of these items in evidence, but that's a legal defense.

MR. DEMOS: If it is understood between myself and the Court, and Mr. Gould that if we agreed --

THE COURT: This is not the trial. The Court has to consider everything, so the Court at this time is going to receive these in evidence on behalf of the Government for the purposes of this hearing.

This is not the trial; this is the hearing.

MR. GOULD: Ever as on that aspect of it I don't think the trial is a proper time to argue the connection, but I believe the construction possession of several of the bills have been shown -- Mr. Lozano being in the car but again we are arguing suppression statements in evidence --

THE COURT: Miss Seltzer, he's offering them for the purposes of the hearing.

MS. SELTHER: I have no objection; not for

- 1	
1	purposes of the hearing.
2	THE COURT: For the purposes of the hearing.
3	MR. DEMOS: For that purpose solely I have
4	no objection.
5	THE COURT: Mr. Kramer?
6	MR. KRAMER: No objection.
7	THE COURT: We'll receive them in evidence
8	on behalf of the Government for purposes of the
9	hearing. You could mark them in evidence. We will
10	take five minutes while he marks them.
11	MS. SELTZER: I thought Mr. Gould said he
12	didn't want to mark them because it would get all
13	messy.
14	THE COURT: It won't get messed up.
15	THE CLERK: Exhibits 1 through 7, received
16	in evidence.
17	(so marked)
18	(continued on next page)
19	
20	
21	

	1
	2 Quinn-direct
	2 CHARLES J. QUINN JR. , called as
	witness having been first duly sworn by the Clerk of
	5 Court testified as follows.
	TRECT EXMINATION
	6 Y MR. GOULD:
	7 Q Mr. Quinn, you work for the Secret Service;
	8 s that correct?
	9 Yes, I do.
10	2 And you were working for the Secret Service
11	on October 31, 1975; is that correct?
12	A Yes, I was.
13	Q And you are on night and
14	And you are on night duty that night; is that
15	A I was on four to twelve.
16	
17	were working with agents Smith seated
18	A Yes.
19	
20	Did you ever have occasion to meet a gentleman
21	by the name of Mr. Caceres, Mr. Lozano, Mr. Liriano?
22	.63.
	Could you briefly tell us the circumstances
23	how you happened to meet these people?
24	A The night duty crew received a complaint of
25	the New York Police Department. I believe it was 114th

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Ouinn-direct

Precinct that they had arrested three persons for production of the counterfeit U.S. currency.

As a result of that the alignment of the night crew was such that they needed an extra agent to go with Agents Smith and Marques. I work four to twell just happens to coincide with the night duty and I only one there, so I went along with them to assist

So you went to the station house; is correct?

- A Yes, 114.
- Q Do you remember the time you arrived
- A It was fairly late in the night of the lim not sure what time it was.
- O Then you took the defendant back to S Service Headquarters?
 - A Yes.
 - Q Do you remember what time you arrived
- A My recollection -- it was early in the when -- probably close to one o'clock.
 - MR. GOULD: Can I have this marked?
 - Q Did you speak with any of the defendan
 - A Yes, I did.

THE COURT: You want this marked?

MR. GOULD: Yes, please.

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	Quinn-direct
	THE COURT: Let him mark it.
3	Q Which defendant
4	THE COURT: You'll have to wait until he
5	
6	THE CLERK: U.S. Secret Service Form SSF 1737
7	
8	
9	Q I show you what has been marked for identifi-
10	fation as Government's Exhibit 8; do you recognize that?
	A Yes.
11	Q What is that?
12	A Secret Service Form 1737, Warning and Consent
13	to Speak form.
14	Q And is that written in English?
15	A Yes, it is.
16	
17	January Dy III. Jouodes.
18	A Yes, it is.
19	Q Did you spear with Mr. Caceres?
20	A Yes, I did.
	Q Do you see Mr. Caceres here today?
21	A Yes.
22	Will you point him out please?
23	A He's in front with a maroon colored shirt with
24	a light blue suit with a vest.
25	THE COURT: Indicating the defendant, Caceres.

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Quinn-direct

- Did Mr. Caceres speak English fluently?
- Yes, sir.
- O Now, could you tell us the circumstances beind, surrounding his signing Covernment's Exhibit 8 for dentification?

A At some stage of the game, after Mr. Caceres has brought down to the New York field office which is our office, I interviewed Mr. Caceres.

Prior to interviewing him about the offense I advised him of his rights by reading him his constitutional rights off this form here.

Q What did Mr. Caceres say after you read him his constitutional rights?

A He read the form itself and I asked him if he understood his rights. He stated he did understand his Fights. I asked him if he was willing to go along with an interview to answer questions. He said that he was.

When you said he read it, did you see him actually looking at the paper?

- T handed the paper to him and had him read it.
- Did you see him read this second part where it says, "waiver"?
- When he looked at the form he might have read it.

1	Quinn-direct
2	Q Did you read it to him?
3	A No, I did not read it to ' m
4	Q Now, did you see Nr. Caceres sign that paper;
5	did he sign that paper in front of you?
6	
7	
8	Q Did he subsequently make a statement to you?
	A Yes, he did.
9	Q And was that statement reduced to writing?
10	A Yes, it was.
11	Q Did you write it?
12	A Printed it.
13	Q The defendant didn't write this?
14	A No, I wrote it.
15	THE CLERK: Two-page document marked Govern-
16	ment's Exhibit 9 for identification.
17	Q I show you what has been marked as Government's
18	Exhibit 9 for identification and tell us what that is?
19	A This is a xerox copy of the statement that I
20	printed that night which Mr. Caceres read and which he
21	signed.
22	Q Did you see him actually looking at the paper,
23	reading it?
24	A Yes sir, I did.
25	Q And these initials "C.C." in each corner, who

1	Quinn-direct
2	
3	A Mr. Caceres.
4	When did he put the initial there?
5	A After he read the statement, before he signed
6	it.
7	Now, this is signed on the front and also on
8	the second page; did you see Mr. Caceres sign both of
9	those?
10	A Yes sir, I did.
11	Q And the name, Dario Marques appears there.
12	Was Agent Marques there at the time of the signing?
13	λ Yes.
14	Q And that's your name, Charles Quinn?
15	A Yes, it is.
16	Q Now, was Agent Smith there from time to time
17	while you were speaking with Mr. Caceres?
18	A Yes, he was.
19	Q Mr. Caceres ever tell you that he didn't want
20	to talk any more?
21	A No.
22	Q Did he ever ask you to see his lawyer?
23	A No, he did not.
24	O Did he ever tell you that he wanted to leave
25	for any reason at all?

Quinn-cross-Seltzer

Q Was it before 11:00?

A I would say probably in the neighborhood of 11:0° or 12:00.

When you were at the precinct, did you have conversation with Patrolman Gaffney. Was he there?

A There was general discussion between myself Agent Marques, Agent Smith, Mr. Gaffney and another officer at that time.

Q Did any of those agents tell you that Mr. taceres supposedly made a statement to them -- oral statement?

I cannot specifically recall that. It's possible that it happened, but I don't remember somebody telling directly.

Q Did you have conversation with Mr. Caceres 4t the precinct?

A No.

By the time you returned with him at your ileadquarters were you aware through some sources that he had made some statement to the New Your City Police?

A By the time we returned to our Headquarters I was aware basically of the background of the case, in that the police had arrested people for passing money and I may have been aware that statements were made but I'm almost positive that I did not know who made the statements. My

8.

1 Quinn-cross-Seltzer impression up to the time that they returned to the office 3 was that none of them spoke English. How did you know that Mr. Caceres spoke 5 English? 6 A By speaking to him. 7 Did you speak to Mr. Lozano or Liriano? 8 I don't recall speaking to them. How did you determine that they did not speak 10 English? 11 That was my impression from the general con-12 versation at the police station, that they were not Americans 13 and they did not speak F glish. 14 C Did a one at the police station tell you that 15 Mr. Caceres had made some statement to the effect that he 16 had found the money in his cab? 17 A Like I said, I was aware as some background 18 information but as to Mr. Caceres specifically making a 19 statement, I do not recall anyone telling me that Mr. Caceres 20 made a statement. 21 Why was it that you were delegated to speak to 22 Mr. Caceres? 23 THE COURT: Ms. Seltzer, what difference does 24 it make. He was the one that spoke to him. 25 There was an Agent Marques. I assume he was

	1 37
	Quinn-cross-Seltzer
	Spanish-speaking person?
	A Yes.
	Q And somebody
	5
	6 the statement? Marques was with you when you took
	1
	THE WITNESS: Yes, he did.
,	THE COURT: And he spoke to the man in English?
10	MS. SELTZER: He also spoke to the attent
11	people in Spanish.
	THE COURT: That might be so: you could
12	the next question.
13	Mr. Marques spoke to the other two in Spanish?
14	A I believe Agent Marques did speak to the other
15	two in Spanish.
16	
17	Somewhere along the line determined that the
18	Other two only spoke Spanish and Mr. Caceres spoke English?
19	THE COURT: This is only the hearing. What
20	difference does it make that the other two just spoke
21	Spanish. This happened to be a fact.
22	MS. SELTZER: I'm trying to determine how it
23	came that Mr. Quinn was speaking too.
	THE COURT: He might have walked up and said
24	hello; what difference does it make?
25	MR. GOULD: It is a contention that Mr. Caceres
	tidt Mr. Caceres

1	Quinn-cross-Seltzer
2	doesn't speak English well enough.
3	MS. SELTZER: I'm going into the facts
4	THE COURT: Ask him about the kind of state-
5	ments.
6	2 My question was, I believe, how did it come
7	to be that you were the one that was interrogating Mar.
8	Gaceres?
9	THE COURT: How did it come to be?
10	A I believe it was truly chance. There was no
11	designation of who was to speak to who.
12	Q And it was only Agent Marques who was present
13	at the time the statement was given?
14	A Smith was in and out. Marques was in and
15	out. We had three defendants, and three defendants it's
16	hard to interview three people and process three people with
17	only three agents.
18	Q Do you recall what time it was that you were
19	at your headquarters speaking to Mr. Caceres?
20	A I believe it was early morning of the first
21	and I would guess it was 1:00 or thereabouts.
22	Q Before you spoke to Mr. Caceres, did you
23	determine any background information, pedigree information?
24	A You say, before I spoke to him?
25	Q After you gave him his rightsbefore you gave

Quinn-cross-Seltzer

2 im his rights?

A I don't really recall whether I got his background information first or whether I advised him of his eights first.

Q At some point did you determine, did you get pedigree information from Mr. Caceres?

A Yes.

Did you determine whether or not he had ever been arrested before that night?

A I would have routinely asked him the question but I do not recall what the answer was.

Do you recall for what period of time it was that you and he were talking?

A I would guess an hour or perhaps even less, somewhere in that area.

Now, the substance of this affidavit, signed by Mr. Caceres, says -- is approximately two pages. You said you wrote it out?

A I printed it.

Did you print it first on another piece of paper, then put it on here or did you print it while he was talking, or could you describe the actual procedure that you followed that you wrote this?

As I interviewed Mr. Caceres, we went back

Quinn-cross-Seltzer

would ask him questions I would make notes over what he raid. I had a piece of paper in front of me. I don't remember what kind of paper it was but I would just write fown his answer to pertinent questions and things that he said.

We rehashed story a couple of times until I thought that I understood what it was that he was saying and he expressed satisfaction with my understanding of what he was saying.

At that stage of the game, after we had gone back over it a few times I then printed "t the statement in block letters so he would be able to understand my printing.

Q And then you said he read this?

A I read it to him out loud. Then I showed it to him and allowed him to read it, and he did read it himself?

MS. SELTZER: I have no further questions.

THE COURT: Cross-examination Mr. Demos.

MR. DEMOS: No questions.

THE COURT: Mr. Kramer.

MR. KRAMER: No questions.

MR. GOULD: The Government would move to have these marked in evidence, limited for purposes of

Quinn-cross-Seltzer this hearing. 10. SELTZER: I would not object for purposes 3 of this hearing, that we will be able to all the evidence that is being produced. 5 THE COURT: For purposes of the hearing they 6 7 can be produced. MR. GOULD: I think the misunderstanding was, 8 9 I assume that they could make any motions at the 10 time of trial. THE COURT: For purposes of this hearing, it's 11 12 to be received and marked in evidenca. 13 Anything further from Agent Quinn? Thank you. THE CLERK: Government's Exhibit 8 and 9, 15 16 previously marked for identification, received in 17 evidence. 18 (continued on next page) 19 20 21 22 23

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THE COURT: Are you ready to proceed?

MR. DEMOS: Ready, your Honor.

THE COURT: Dring in the jury.

(The jury enters the jury box.)

Gentlemen of the Jury:

We come now to the final stage of the proceedings. The Court will now charge you on the law to be applied to the facts in the case.

As you may recall, I initially gave you a pre-charge as to the manner in which the case, would be presented to you. I told you that most of the evidence in the case would come in the form of testimony of witnesses and that you were to pay special attention to the manner in which the witnesses testified.

would be the judges of the facts in the case, that being your sole province, and that your recollection of the facts after having heard all of the evidence in the case, the testimony of witnesses and the documentary proof, was to control the determination of the issues. Likewise, at that time I told you that I would be the judge of the law. This has not

Charge of the Court

changed at this stage of the proceedings.

I will not review the facts in this case

for you because I am certain that with summations

by the attorneys there is no need for the Court to

review the facts. In any event, if you find there

is some fact in the case you may lave forgotten or

don't recollect or you can't agree with each other

in your deliberations, you can have it read back

from the record, and that will, I am sure, refresh

your memory.

In any event, I am the judge of the law. You must accept what I say to be the law in this case.

The attorneys have been permitted by the Court and by the Rules to make opening statements and summations to you. Under no circumstances are the statements they have made by way of opening or by way of summation to be taken as evidence.

However, the court and the law does permit you to take the arguments that they have proffered before you and weigh those arguments, and if you agree with what they have said on either side of the case, you may use those arguments in your deliberations and in discussing the case with each other and try to convince one another as to what the final determination shall be with reference to the deliberations

at hand.

If you feel that the arguments are not commensurate with the testimony and the proof in the case, you may disregard them. The arguments are not evidence. You need not weigh them. However, there are times when the arguments of the attorneys will give you an insight as to something you may have missed and you may discuss that portion of it if you so desire.

Of course, I also said to you that during the trial the Court will be the judge of the law, likewise as to motions which at times we had at a side bar, as you may recall. That was not for the purpose of keeping any of the proof from you, but were matters of law that were discussed between the attorneys and the Court itself and should not have come before you.

If you feel that you have discovered by some stretch of your imagination what this Court thinks as to either some of the testimony or the case itself, you should remove that from your minds, because I tell you here and now I have come to no conclusion in this case, nor have I indicated to you in any way whatsoever what my feelings with

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reference to the facts in the case or with reference to the quilt or innocence of the defendants. That is your province and your job. You should not try to weigh what you believe the Court's impressions may be.

appear before you are advocates. They are advocating the best case they can for the parties they represent, and they have a right to exercise as much forcefulness as they desire in their questioning or otherwise in presenting their case. I say this because this is within the framework of the ordinary trial.

No statement, ruling, remark or comment which I made during the course of the trial was intended to indicate my opinion as to how you should decide the case or to influence you in any way in your determination of the facts. If at any time I made any comment regarding the facts, you are at liberty to disregard it.

At times I asked questions of the witnesses.

When I did so it was for the purpose of bringing out matters which I felt should be brought out and not in any way to indicate my opinion about the

facts or to indicate the weight I felt you should give to the testimony of the witnesses. Also, you should not now show prejudice toward a lawyer or his client because I found it necessary to admonish the lawyer during the course of the trial. It is the duty of the Court to admonish an attorney who out of zeal for his cause does something which is not in keeping with the rules of evidence or procedure. You are to draw no inference against a side to whom an admonition of the Court may have been addressed during the trial of this case.

Objections and rulings. It is the duty of the attorney on each side of a case to object when the other side offers testimony or other evidence which the attorney believes is not properly admissible. You should not show prejudice against an attorney or his client because the attorney has made objections. Upon allowing testimony or other evidence to be introduced over the objection of an attorney, the Court does not, unless expressly stated, indicate any opinion as to the weight or effect of such evidence.

As stated before, the jurors are the sole judges of the credibility of all witnesses and the weight and effect of all evidence. When the Court

Charge of the Court

has sustained an objection to a question addressed to a witness, the jury must disregard the question entirely and may draw no inference from the wording of it or speculate as to what the witness would have said if he had been permitted to answer the question.

In determining the facts, the jury is reminded that before each member was accepted and sworn to act as a juror, he or she was asked questions regarding his or her competency, qualifications, fairness and fr edom from prejudice or sympathy. On the faith of those answers the juror was accepted by the parties. Therefore, those answers are as binding on each of the jurors now as they were then and should remain so until the jury is discharged from consideration of this case.

You cannot decide that you do not like the sections of the law that I will quote to you, or any other part of the charge. You have the obligation of accepting the law as I charge it, just as I have the obligation of accepting your findings of fact in your ultimate verdict as to the guilt or innocence of each defendant as to each charge. It lends for predictability and stability if

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judges throughout the country in types of charges such as this charge uniformly or substantially so and the juries accept it, it would be unfair for you to decide this case on your own notions of what the law should be and another jury decide it on their own notions of what the law should be. This is why the obligation is a firm one and one that you should understand.

You know by this time that this case has come before you by way of an indictment presented by a grand jury sitting in this Eastern District of New York. That indicament charges the defendants with the counts I shall now read to you. Remember, the indictment is merely an accusation, merely a piece of paper. It is not evidence and is not proof of anything. The indictment reads as follows:

"Count 1. On or about October 31, 1975, within the Eastern District of New York, the defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve note, Serial Number F67681889A, to Sip 'n Smoke Store at 29-16 Broadway, Astoria,

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Charge of the Court

New York, the defendants Cosme A. Caceres, Leopold Lozano and Jose A. Liriano knowing such note to be counterfeited, this being a violation of Title 13, United States Code Section 472, and Section 2.

"Count 2. On or about October 31, 1975, within the Eastern District of New York, defendants Cosme A. Caceres, Leopold Lezano, and Jose A. Liriano, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Peserve note, Serial Number F67681889A, to Malken's Bakery, 29-17 Broadway, Astoria, New York, the defendants Cosme A. Caceras, Leopold Lozano and Jose A. Liriano knowing such note to be counterfeited, in violation of Title 18, United States Code, Section 472, and Section 2.

"Count 3. On or about October 31, 1975,
within the Eastern District of New York, defendants
Cosme A. Caceres, Leopold Lozano and Jose A.
Liriano, with intent to defraud did utter and
publish counterfeited United States currency, to
wit, one counterfeited twenty dollar Federal
Reserve note, Serial Number P67531889A, to Leo-Pete
Grocery, 1455 Broadway, Astoria, New York, the

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defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano knowing such note to be counterfeited, in violation of Title 18, United States Code Section 472, and Section 2.

"Count 4. On or about October 31, 1975,
within the Eastern District of New York, defendants
Cosme A. Caceres, Leopold Lozano, and Jose A.
Liriano, with intent to defraud, did utter and
publish counterfeited United States currency, to
wit, one counterfeited twenty dollar Federal
Reserve note, Serial Number F67681889A, to
Pasticceria LaTorre at 32-19 Broadway, Astoria,
New York, the defendants Cosme A. Caceres, Leopold
Lozano and Jose A. Liriano knowing such note to
be counterfeited, in violation of Title 13,
United States Code Section 472 and Section 2.

"Count 5. On or about October 31, 1975,
within the Eastern District of New York, defendants
Cosme A. Caceres, Leopold Lozano and Jose A.
Liriano, with intent to defraud, had in their
possession counterfeited United States currency,
to wit, approximately six counterfeit twenty
dollar Federal Reserve notes, Serial Number
F67681839A, and one counterfeited fifty dollar

Faderal Peserve note, Serial Number B31985757A, the defendants Cosma A. Caceres, Leopold Lozano, and Jose A. Liriano knowing such notes to be counterfeited, in violation of Title 18, United States Code Section 472, and Section 2.

"Count 6. On or about October 31, 1975, within the Eastern District of New York, defendant Jose A. Liriano, with intent to defraud, did have in his possession counterfeited United States currency, to wit, one counterfeited fifty dollar Federal Reserve note, Serial Number B31935757A, the defendant Jose A. Liriano Mnowing such note to be counterfeited, in violation of Title 13, United States Code, Section 472.

"Count 7. On or about October 31, 1975,
within the Dastern District of New York, defendant
Cosme A. Caceres, with intent to defraud, did have
in his possession counterfeited United States
currency, to wit, one counterfeited twenty dollar
Federal Reserve note, Serial Number F67681389A,
the defendant Cosme A. Caceres knowing such note
to be counterfeited. This is in violation of
Title 18, United States Code, Section 472.

"Count 8. On or about October 31, 1975,

within the Eastern District of New York, defendant Cosme A. Caceres, Leopold Lozano, and Jose A.

Liriano did knowingly and willfully conspire to commit an offense against the United States, in violation of Title 13, United States Code, Section 472 by conspiring to possess and conspiring to utter and publish a quantity of counterfeited United States currency, to wit, counterfeited twenty dollar Federal Reserve notes, Serial Number P67681389A and counterfeited fifty dollar Federal Reserve notes B31985757A, in violation of Title 13, United States Code, Section 371.

In furtherance of the said unlawful conspiracy and for the purposes of effecting the
objectives thereof, the defendants Cosme A.
Cacares, Leopold Lozano and Jose A. Liriano committed the following overt acts.

- "1) On or about October 31, 1975, the defendants Cosme A. Caceres, Leopold Lozano and Jose A. Liriano met to discuss the disposition of a quantity of counterfeited Federal Reserve notes.
- "2) On or about October 31, 1975, the defendant Cosme A. Caceres entered the Sip'n Smoke store at 28-16 Broadway in Astoria, Queens.

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"3) On or about October 31, 1975, defendants
Cosme A. Caceras, Leopold Lozano, and Jose A.
Liriano drove in a 1963 Chrysler, New York License
plate 920XLL, from 28-16 Broadway to 1455 Broadway
in Astoria, Queens."

the indictment charges in each count that the offense was committed on or about a certain date. As to all eight counts, the proof need not establish with certainty the exact date of the alleged offense. It is sufficient if the evidence in the case establishes beyond a reasonable doubt that the offense was committed on a date reasonably near the date alleged in each count of the indictment.

These are some general introductory remarks regarding the statutes applicable to Counts 1, 2, 3 and 4 in this case.

The individual counts numbered 1, 2, 3 and 4 of this indictment are all based on the very same two statutes, which I will read for you in a few moments, to wit, Title 18 of the United States Code, Section 472, and Title 18, of the United States Code, Section 2.

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Let me emphasize this to you, for it is of crucial importance: Although the counts numbered 1, 2, 3, and 4 are based on the very same sections of the very same statutes, each count charges a separate offense occurring at a separate commercial establishment; therefore each count should be carefully, seriously, and separately and individually considered by you as such.

governing the separate and individual counts
numbered 1, 2, 3 and 4. Please apply this law to
each of the aforementioned counts separately and
individually. In each case ask yourselves in
applying the law to each factual transaction set
out in the individual counts numbered 1, 2, 3 and
4, Has the Government met its burden as to each such
count when considered separately and individually?

As to the statute, Counts 1, 2, 3 and 4 of the indictment are all based on Title 18 of the United States Code, Section 472, and on Title 18 of the United States Code, Section 2.

Title 18 of the United States Code, Section 472, provides in partinent part as follows:

"Whoever with intent to defraud, utters or

publishes any counterfeited United States currency shall be guilty of an offense against the laws of the Unites States."

In a case where two or more persons are charged with the commission of a crite, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

Section 2 of Title 10 of the United States

Code deals with the aiding and abetting of the

commission of an offense against the laws of the

United States. Section 2 provides in pertinent

part as follows:

"Thoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"Whoever willfully causes an act to be done, which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

In other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense.

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Participation is willful if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

abet another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture and willfully participate in it as he would in something he wishes to bring about, that is to say, that he willfully seek by some act or omission of his to make the criminal venture succeed.

An act or emission is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or disregard the law.

You, of course, may not find any defendant quilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person

Charge of the Court

or persons and that the defendant participated in its commission.

Willfully to cause criminal act defined.

In order to cause another person to commit
a criminal act it is necessary that the accused
willfully do or willfully fail to do something
which in the ordinary performance of official duty
or in the ordinary course of the business or
employment of such other person or by reason of
the ordinary course of nature or the ordinary
habits of life results in the other person's
either doing something the law forbids or failing
to do something the law requires to be done.

An act or a failure to act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done, that is to say, with bad purpose either to disobey or to disregard the law.

Mere presence not sufficient. Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the

Charge of the Cour

that the defendant was a participant and not merely a knowing spectator.

To determine whether a defendant aided and abetted the commission of an offense, you ask yourselves these questions:

Did he associate himself with the venture?

Did he participate in it as something he wished to bring about?

Did he seek by his actions to make it succeed?

If he did, then he is an aider and abettor and this is true whether or not he received or intended to receive the proceeds of the venture.

Essential elements of the offense.

Counts 1, 2, 3 and 4 of the indictment charge that on or about October 31, 1975, within the Eastern District of New York, the defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud, did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve note to each of the four respective commercial establishments set forth respectively in each of the four

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Charge of the Court

counts, the defendants knowing in each such case that such note was counterfeited.

In Count 1 the relevant commercial establishment is the Sip 'n Smoke store at 28-16 Broadway, Astoria, New York.

In Count 2 the relevant commercial establishment was Walken's Bakery at 29-17 Broadway, Astoria, New York.

In Count 3 the relevant commercial establishment is Leo-Pete Grocery at 1455 Broadway,
Astoria, New York.

In Count 4 the relevant commercial establishment is the Pasticceria LaTorre at 32-19
Broadway, Astoria, New York.

The essential elements of the offense charged in Counts 1, 2, 3 and 4 of the indictment, each of which the Government must prove beyond a reasonable doubt, are:

First, that the defendant committed the act or acts of uttering and publishing counterfeited United States currency;

Second, that the defendant knew at the time that he was committing such act or acts that the currency was counterfeit;

Third, that the defendant did such act or acts

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willfully and with the specific intent to defraud some parson.

The are reminded that in considering each of the assential elements of the crime charged in Counts 1, 2, 3 and 4 of the indictment that whoever mids, abets, counsels, commands, induces or procures the commission of an offense against the laws of the United States is punishable as a principal.

In order to aid or abet in the commission of an offense against the laws of the United States a person must associate himself with the criminal venture, participate in it, and try to make it succeed.

As stated before, the burden is always upon the Government to prove beyond a reasonable doubt every essential element of the crime charged.

Also remember that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Uttering and publishing counterfeit money. Specific intent required. You may not find a defendant guilty of the offense charged in Counts

1, 2, 3 and 4 of the indictment simply because it appears that he did in fact attempt to pass the Federal Reserve note shown by the evidence, and that the note in fact was counterfeit, unless you find beyond a reasonable doubt that the defendant knew at the time that the note was counterfeit and that, so knowing, he attempted to pass it for the purpose of defrauding some person.

Statute. Count 5 of the indictment is based on Title 18, United States Code, Section 472, and on Title 18 of the United States Code, Section 2.

Title 18 of the United States Code, Section 472, provides in pertinent part as follows:

"Whoever with intent to defraud, keeps in his possession any counterfeit currency of the United States shall be guilty of an offense against the United States."

As I previously indicated to you, in a case where two or more persons are charged with the commission of a crime, the guilt of any defendant may be established without proof that he personally did every act constituting the offense charged.

To facilitate your understanding, I will re-read Section 2 of Title 18 of the United States

Charge of the Court

Code, which deals with the aiding and abetting of the commission of an offense against the laws of the United States. Section 2 provides in pertinent part as follows:

"Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission is punishable as a principal.

"Whoever willfully causes an act to be done which, if directly performed by him or another would be an offense against the United States, is punishable as a principal."

As I previously explained to you, in other words, every person who willfully participates in the commission of a crime may be found to be guilty of that offense.

Participation is willful if done voluntarily and intentionally and with specific intent to do something the law forbids or with the specific intent to fail do something the law requires to be done; that is to say, with a bad purpose, either to disobey or to disregard the law.

It is very important that I once again go over with you certain important definitions.

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Aid and Abet Defined. In order to aid and aret another to commit a crime it is necessary that the accused willfully associate himself in some way with the criminal venture and willfully participate in it as he would in something he wishes to bring about; that is to say, that he willfully seek by some act or emission of his to make the criminal venture succeed.

"An act or emmission is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done; that is to say, with ball purpose either to disobey or to disregard the law.

"You, of course, may not find any defendant quilty unless you find beyond a reasonable doubt that every element of the offense as defined in these instructions was committed by some person or persons and that the defendant participated in its commission.

"Willfully to Cause Criminal Act, Defined.

"In order to cause another person to commit
a criminal act it is necessary that the accused

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Charge of the Court

which in the ordinary performance of official duty or in the ordinary course of the business or employment of such other person or by reason of the ordinary course of nature or the ordinary habits of life results in the other person's either doing something the law forbids or failing to do semething the law requires to be done.

"An act or failure to act is willfully done if done voluntarily and intentionally and with the specific intent to do something the law forbids or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose, either to disobey or to disregard the law.

"Mere Presence Not Enough. Mere presence at the scene of the crime and knowledge that a crime is being committed are not sufficient to establish that the defendant aided and abetted the crime unless you find beyond a reasonable doubt that the defendant was a participant and not merely a knowing spectator," therefore, as I have previously instructed you, to determine whether a defendant aided and abetted the commission of an offense,

you ask yourselves these questions:

Did he associate himself with the venture? Did he participate in it as something he wished to bring about?

Did he seek by his actions to make it succeed?

If he did, then he is an aider and an abettor. This is true whether or not he received or intended to receive the proceeds of the venture.

Essencial Elements of the Offense.

Count 5 of the indictment charges that on or about October 31, 1975, within the Eastern District of New York, the defendants Cosme A. Caceres, Leopold Lozano, and Jose A. Liriano, with intent to defraud, had in their possession counterfaited United States currency, to wit, approximately six counterfeited \$20 Federal Reserve notes and one counterfaited \$50 Faderal Reserve note, knowing such notes to be counterfeited.

The essential elements of the offense charged in Count 5 of the indicament, each of which the government must prove bevond a reasonable doubt are: First, that the defendants had possession of the counterfeited notes specified in the indictment;

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Second, that the defendants had such possession with knowledge that the notes were counterfeited;

Third, that the defendants had such knowing possession of the counterfeited notes with the specific intent to defraud some person.

As stated before, the burden is also upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Also bear in mind the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Count 6 of the indictment is based on Title 18 of the United States Code, Section 472.

As I have previously stated to you, Title 18 of the United States Code, Section 472, provides in pertinent part as follows:

"Whoever with intent to defraud, keeps in his possession any counterfeited currency of the United States shall be guilty of an offense against the laws of the United States."

or about October 31, 1975, within the Eastern
District of New York, the defendant Jose A. Liriano,

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with intent to defraud had in his possession .

counterfeited United States currency, to wit, one

counterfeited \$50 Federal Reserve note, knowing

such note to be counterfeited.

The essential elements of the offense charged in Count 6 of the indictment, each of which the government must prove beyond a reasonable doubt are:

First, that the defendant Jose A. Liriano had possession of the counterfrited note specified in the indictment;

Second, the defendant Jose A. Liriano had such possession with knowledge that the note was counterfeited;

Third, that the defendant Jose A. Liriano had such knowing possession of the counterfeited note with the specific intent to defraud some person.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

Always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Charge of the Court

Count 7 of the indictment is based on Title 15 of the United States Code, Section 472, which I will now read to you:

"Thoever with intent to defraud, keeps in his possession any counterfeited currency of the United States shall be guilty of an offense against the laws of the United States."

The Essential Elements of the Offense.

Count 7 of the indictment charges that on or about October 31, 1975, within the Eastern District of New York, the defendant Cosme A. Caceres, with intent to defraud, had in his possession counterfeited United States currency, to wit, one counterfeited \$20 Federal Feserve note, knowing such note to be counterfeited.

The essential elements of the offense charged in Count 7 of the indictment, each of which the government must prove beyond a reasonable doubt are:

First, the defendant Cosme A. Caceres had possession of the counterfeited note specified in the indicament;

Second, the defendant Cosme A. Caceres had such possession with knowledge that the note was counterfeited;

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Third, that the defendant Cosme A. Caceres
had such knowing possession of the counterfeited
note with the specific intent to defraud some person.

As stated before, the burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged.

upon a defendant in a criminal case the burden or duty of calling my witness or providing any evidence.

Statute. Count Eight of the indictment is

based on Title 18 of the United States Code, Section

371, which reads in pertinent part as follows:

"If two or more persons conspire to commit
any offense against the United States, and one or
more of such persons do any act to effect the object
of the conspiracy, each is guilty of an offense
against the laws of the United States."

Conspiracy Defined and Proof of Existence of Conspiracy.

A conspiracy is a combination of two or more persons by concerted action to accomplish some unlawful purpose or to accomplish some lawful purpose by unlawful means.

So a conspiracy is a kind of partnership

Charge of the Court

in criminal purpose in which each member becomes the agent of every other member. The gist of the offense is a combination or agreement to discbey or to disregard the law.

Mere similarity of conduct among various persons and the fact they may have associated with each other and may have assembled together and discussed common aims and interests does not necessarily establish proof of the existence of a conspiracy; however, the evidence in the case need not show that the members entered into any express or formal agreement or that they directly by words spoken or in writing stated between themselves what their object or purpose was to be or the details thereof or the means by which the object or purpose was to be accomplished.

What the evidence in the case must show beyond a reasonable doubt in order to establish proof that a conspiracy existed is that the members in some way or manner or through some contrivance expressly or tacitly came to a mutual understanding to try to accomplish a common and unlawful plan.

The evidence in the case need not establish that all the means or methods set forth in the

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indictment were agreed upon to carry out the alleged conspiracy, nor that all means or methods which were agreed upon were actually used or put into operation nor that all of the persons charged to have been members of the alleged conspiracy were such. What the evidence in the case must establish beyond a reasonable doubt is that the alleged conspiracy was knowingly formed by two or more persons, including the accused, and that some overt act in furtherance of the conspiracy was performed.

Proof of Membership in Conspiracy. One may become a member of a conspiracy without full knowledge of all the details of the conspiracy. On the other hand, a person who has no knowledge of a conspiracy but happens to act in a way which furthers some object or purpose of the conspiracy does not thereby become a conspirator.

Defore the jury may find a defendant or any other person has become a member of a conspiracy, the evidence in the case must show beyond a reasonable doubt that the conspiracy was knowingly formed and that the defendant or other person who is claimed to have been a member willfully participated

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in the unlawful plan with the intent to advance or further some object or purpose of the conspiracy.

act or participate willfully means to act or participate voluntarily and intentionally and with specific intent to do something the law forbids or with specific intent to fail to do something the law requires to be done; that is to say to act or participate with a bad purpose either to disobey or to disregard the law. So, if a defendant or any other person, with understanding of the unlawful character of a plan, knowingly encourages, advises or assists, for the purpose of furthering the undertaking or scheme, he thereby becomes a willful participant—a conspirator.

One who willfully joins an existing conspiracy is charged with the same responsibility as if he had been one of the originators or instigators of the conspiracy.

In determining whether a conspiracy existed, the jury should consider the actions and declarations of all the alleged participants; however, in determining whether a particular defendant was a member of a conspiracy, the jury should consider only his acts and statements. He cannot be bound

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by the acts or declarations of other participants until it is established that a conspirary existed beyond a reasonable doubt and that he was one of its members.

Essential Elements of Offense. When Conspiracy Offense Complete.

Five essential elements are required to be proved by the government beyond a reasonable doubt in order to establish the offense of conspiracy charged in the indictment.

First, that two or more people were involved, since a conspiracy requires an agreement;

Second, that the purpose of the agreement was to possess and to utter and publish a quantity of counterfaited United States currency, to wit, counterfeited \$20 Federal Reserve notes and counterfeited \$50 Federal Reserve notes:

Third, that the defendants knew that the aforementioned counterfeited notes were in fact counterfeited:

Fourth, that the defendants took part in such conspiracy knowingly and intentionally; and

Fifth, one of the conspirators did some overt act during the course of the conspiracy in order to

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carry out the purpose of the conspiracy.

The burden is always upon the prosecution to prove beyond a reasonable doubt every essential element of the crime charged. You cannot infer the existence of one element from proof of another element.

If you are left with a reasonable doubt as to any element of the crime, you must acquit. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

The first three elements do not necessitate a lengthy explanation.

The first element is the determination that two or more persons were involved.

The second element is the determination that the purpose of the agreement was to possess and to utter and publish a quantity of counterfeited notes.

The third element is the requirement that the defendants knew that the Federal Reserve notes were in fact counterfeit.

More need be said as to the last two elements.

The fourth element is that each defendant knowingly and intentionally took part in the conspiracy charged.

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An act is done knowingly if it is done voluntarily and intentionally and not because of misunderstanding or accident or other innocent reasons. Whether something is done knowingly involves a state of mind, but a state of mind, like other facts, can be determined from the evidence and from inferences from the evidence.

is that one of the conspirators did some overt act during the course of the conspiracy in order to carry out the purpose of the conspiracy. In proving overt acts to establish that the conspiracy was something more than a mere unexecuted agreement, the government is not confined to and need not prove the overt acts stated in the indictment. It is sufficient that the government establish any other overt acts committed during the course of and in furtherance of the conspiracy.

A conviction may be based on overt acts not alleged in the conspiracy as long as such overt acts are shown to have been committed during the course of and in furtherance of the very conspiracy alleged in the indictment.

Acts and Declarations of Co-conspirators.

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Whenever it appears beyond a reasonable doubt from the evidence in the case that a conspiracy existed and that a defendant was one of the members, then the statements thereafter knowingly made and the acts thereafter knowingly done by any person likewise found to be a member may be considered by the jury as evidence in the case as to the defendant found to have been a member even though the statements and acts may have occurred in the absence of and without the knowledge of the defendant, provided such statements and acts were knowingly made and done during the continuance of such conspiracy and in furtherance of some object or purpose of the conspiracy; otherwise any admission or incriminatory statement made or act done outside of court by one person may not be considered as evidence against any person who is not present and did not hear the statement made or see the act done; therefore, statements of any conspirator which are not in furtherance of the conspiracy or made before its existence or after its termination may be considered as evidence only against the person making them.

Consideration of evidence. Success of

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Compairacy Immaterial. Definition of Overt Act.

In your consileration of the evidence in the case as to the offense of consmiracy charged, "or should first letermine whether or not the conspiracy existed as alleged in the indicament. Il you conclude the conspiracy did exist, you should next determine whether or not the accused willfully became a member of the conspiracy. If it appears beyond a reasonable doubt from the eridence in the case that the compairacy alleged in the indicement was willfully formed and that the defendant willfully became a member of the conspiracy, either at its inception or afterwards and that thereafter one or more of the conspirators knowingly commissed during the course of the conspiracy one or more overt acts in furtherance of some object or purpose of the conspiracy, then there may be a conviction even though the conspirators may not have succeeded in accomplishing their common object or purpose and in fact may have failed of so doing.

The amtent of any defandant's participation, noreover, is not determinative of his guilt or innocence. A defendant may be convicted as a conspirator even though he may have played only a minor part in

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the conspiracy.

An overt act is any act knowingly committed by one of the conspirators in an effort to effect or accomplish some object or purpose of the conspiracy. The overt act need not be criminal in nature if considered separately and apart from the conspiracy. It may be as innocent as the act of a man walking across the street or driving an automobile or using a telephone. It must, however, be an act which follows and tends towards accomplishment of the plan of scheme and must be knowingly done in furtherance of some object or purpose of the conspiracy charged in the indictment.

There must be more than one conspirator.

The eighth count of the indictment charges a conspiracy between all three named defendants. You are charged as a matter of law that a person cannot conspire with himself, and therefore you cannot find any of the defendants guilty of the crime of conspiracy unless you find beyond a reasonable doubt that he participated in the conspiracy as charged with at least one other of the named defendants.

With this qualification you may find all

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three of the named defendants guilty, or all three of the named defendants not quilty, or you may find that two of the defendants are guilty while one of the defendants is not quilty, all in accordance with these instructions and the facts you find.

However, you are reminded that you may not as a matter of law and of logic find only one of the named defendants guilty of conspiracy while finding the other two named defendants not guilty.

Definitions.

Please bear in mind the following definitions in considering the essential elements of the crimes charged:

Definition of Possession.

The law recognizes two kinds of possession: actual possassion and constructive possession. A person who knowingly has direct physical control over a thing at a given time is then in actual possession of it. A person who, although not in full possession, knowingly has the power at a given time to exercise dominion or control over a thing, is then in constructive possession of it.

The law recognizes also that possession may be sole or joint. If one person has actual or constructive possession of a thing, possession is sole.

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If two or more persons share actual or constructive possession of a thing, their possession is joint.

If you find from the evidence beyond a reasonable doubt that the defendants either alone or with
others had actual or constructive possession of the
counterfeited bills described in the indictment,
then you may find that the counterfeited bill or
bills were in the possession of the defendant within
the meaning of the word possession as used in these
constructions.

Actual, manual or personal possession is not a necessary element of the crime. It is sufficient if the possession is constructive, if the counterfeited bills are shown to be under the control of the person charged though in actual physical possession of another. The government does not have to prove that the counterfeited bills were possessed by the defendant for any particular length of time.

Knowingly. In act is done knowingly if done voluntarily and intentionally and not because of mistake or accident or other innocent reason. The purpose of adding the word "knowingly" was to insure that no one would be convicted for an act done because of mistake or accident or other innocent reason.

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Definition of "Willfully" -- to Act.

An act is done willfully if done voluntarilly and intentionally and with the specific intent to do something the law forbids; that is to say, with bad purpose either to disobey or to disragard the law.

To Act with Intent to Defraud.

willfully and with the specific intent to deceive or cheat, ordinarily, for the purpose of either causing some financial loss to another or bringing some financial gain to oneself. However, the evidence in the case need not establish that the United States or any person was actually defrauded, but only that the accused acted with the intent to defraud.

To Utter and to Publish Defined.

The terms to utter and to publish as used in the statute are symonymous, since the meaning of both is to declare or assert, directly or indirectly, by words or actions that the counterfeited note is genuine.

What this means then is to make any use of the counterfeited note with knowledge of its counterfeited nature, such as an attempt to place in

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circulation whereby or in connection with which some assertion, representation or claim is made to another in some way or manner, directly or indirectly, empressly or implicate or by words or conduct that the counterfeited note is genuine.

Definition of Specific Intent. This is applicable to all offenses charged in the indictment. The crimes charged in this case are serious crimes which require proof of specific intent before a defendant can be convicted. Specific intent, as the term implies, means more than the general intent to commit the act.

must prove that a defendant knowingly did an act which the law forbids, purposely intending to violate the law. Such intent may be determined from all the facts and circumstances surrounding the case.

Intent ordinarily may not be proved directly, because there is no way of fathoming or scrutinizing the operations of the human mind, but you may infer the defendants' intent from the surrounding circumstances. You may consider any statement made and act done or omitted by a defendant and all other facts and circumstances in evidence which indicate

his state of mind.

It is ordinarily reasonable to infer that a person intends the natural and probable consequences of acts knowingly done or knowingly omitted.

Reasonable Doubt.

two types of evidence from which a jury may properly find the defendant guilty of a crime. One is direct evidence, such as testimony of an eyewitness. The other is circumstantial evidence, which is proof of a chain of facts and circumstances pointing to the commission of the offense.

As a general rule, the law makes no distinction between direct and circumstantial evidence, but simply requires that before convicting a defendant the jury must be satisfied of the defendant's guilt beyond a reasonable doubt from all the evidence in the case.

A defendant is presumed innocent of the crime; thus the defendant, although an accused, begins the trial with a clean slate and with no evidence against him, and the law permits nothing but legal evidence to be presented before a jury to be considered in support of any charge against an accused. So that the presumption of innocence alone is sufficient to

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acquit a defendant unless you, the jury, are satisfied beyond a reasonable doubt of the defendant's quilt after careful and impartial consideration of all the evidence in the case.

guilt beyond all possible doubt. The test is one of reasonable doubt, and reasonable doubt is doubt based upon reason and common sense, the kind of doubt that would make a reasonable person heistate to act.

Proof beyond a reasonable doubt must therefore be proof of such a convincing character that you would be willing to rely and act upon it unhesitatingly in the most important of your own affairs.

You the jury will remember that a defendant is never to be convicted on mere suspicion or conjecture. The burden is always upon the prosecution to prove guilt beyond a reasonable doubt. This burden never shifts to a defendant. The law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence; so if the jury views the evidence in the case as reasonably permitting either of two conclusions, one of innocence, the other of guilt, you the jury should adopt the conclusion of innocence.

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I have said the defendant may be proven guilty either by direct or circumstantial evidence. I have said that direct evidence is the testimony of one who asserts actual knowledge of a fact, such as an eyewitness. Also, circumstantial evidence is proof of a chain of facts and circumstances indicating the guilt or innocence of a defendant. You, the jury, may make common sense inferences from the proven facts.

It is not necessary that all the inferences drawn from the facts in evidence be consistent only with guilt and inconsistent with every reasonable hypothesis of innocence. The test is one of reasonable doubt and should be based upon all the evidence, the testimony of the witnesses, the documents offered into evidence, and the reasonable inferences which can be drawn from the proven facts.

An inference is a deduction or conclusion which reason and common sense lead the jury to draw from the facts which have been proved. You are to consider only the evidence in the case, but in your consideration of the evidence you are not limited to the bald statements of the witnesses. On the contrary you are permitted to draw from the facts which you

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find have been proved such reasonable inferences as seem justified in the light of your own experience.

A reasonable doubt may arise not only from the evidence produced, but also from a lack of evidence. Since the burden is upon the prosecution to prove the accused quilty beyond a reasonable doubt of every essential element of the crime charged, a defendant has the right to rely upon failure of the prosecution to establish such proof.

Proof of Knowledge and Intent.

Knowledge and intent exist in the mind.

Since it is not possible to look into a man's mind to see what went on, the only way you have for arriving at a decision in these questions is for you to take into consideration all the facts and circumstances shown by the evidence, including the exhibits, and to determine from all such facts and circumstances whether the requisite knowledge and intent were present at the time in question.

Direct Proof is Unnecessary.

Enowledge and intent may be inferred from all the surrounding circumstances. As far as intent is concerned, you are instructed that a person is presumed to intend the natural and probable or ordinary

consequences of his acts. You must find beyond a reasonable doubt from all the evidence that the defendants know at the time that they possessed or uttered the counterfaited money that the bills were in fact counterfeit.

The question of knowledge and intent are one of the elements of the crime which must be proven beyond a reasonable doubt.

While a man may not close his eyes to those facts which to the ordinary person would be obvious, he is not expected to have anything but normal insight into the affairs of his life. If you find from all the evidence that there was no reason why these defendants could have known or should have known that the money was counterfeit, then you should properly find them not guilty.

There suspicion that something was wrong or improper is not equivalent to knowledge and intent.

Credibility of vitnesses. You as jurors are the sole judges of the credibility of the witnesses and the weight their testimony deserves, and it goes without saying that you should scrutinize all the testimony given, the circumstances under which each witness has testified and every matter in

worthy of belief. Consider each witness's intelligance, motive and state of mind and his demeanor
and manner while on the stand. Consider the
witness's ability to observe the matters as to which
he or she has testified, whether he or she impressed
you as having an accurate recollection of these
matters. Consider also any relation each witness may
bear to either side of the case, the manner in which
each witness might be affected by the verdict, and
the extent to which, if at all, each witness is
either supported or contradicted by other evidence
in the case.

Inconsistencies or discrepancies in the testimony of a witness or between the testimony of different witnesses may or may not cause the jury to discredit such testimony. Two or more persons witnessing
an incident or a transaction may see or hear it
differently, and innocent misrecollection, like
failure of recollection, is not an uncommon
experience.

In weighing the effect of a discrepancy, always consider whether it pertains to a matter of importance or an unimportant detail, and whether

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the discrepancy results from innocent error or intentional falsehood.

After making your own judgment, you will give the testimony of each witness such credibility, if any, as you may think it deserves.

Another test that you can use in determining the truthfulness or cradibility of a witness is to use your own good common sense in addition to these essentials that I have given you. You can use your good common sense as you do in your everyday experience where you must make important decisions based upon what others tell you. When you decide either to accept or ignore the statements of others, you use your common sense. Your good judgment will say to you somehow or other that whatever they say does not appear to be truthful, that somehow or other you just do not believe what they have said. That is your ability to reason, your ability to determine the truthfulness of the person you are speaking with.

Likewise, your common sense should be used to determine the weight to be given to testimony of a witness. You take that same good common sense into the jury room. You do not leave it outside.

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In addition to what I have said, use your common sense as a test in emercising your good judgment and in determining whether or not each defendant is guilty of each of the crimes charged. It is for you to determine whether the witnesses in this case have testified truthfully, whether or not they have an interest in the case, what that interest may be and how great it is, and whether or not they have told you falsehoods. This is all for you to determine.

Every witness's testimony must be weighed as to its truthfulness. If you find any witness lied as to any material fact in the case, then the law gives you certain privileges. One of those privileges is that you have the right to disregard the entire testimony of that witness. If you find, however, that you can sift through that testimony and determine which of the testimony is true and which was false, then the law allows you to take the portions which are true and weigh it and disregard those portions which were false. That, again, is within your prerogative.

The weight of the evidence is not necessarily determined by the number of witnesses testifying on either side. You should consider all the facts and

circumstances in evidence to determine which of
the virmesses are worthy of greater credence.
You may find that the testimony of a smaller number
of witnesses on one side is more credible than the
testimony of a greater number of witnesses on the
other side. You are not obliged to accept testimony
even though the testimony is uncontradicted and
the witness is not impeached. You may decide
because of the witness's bearing and demeanor or
because of the inherent improbability of his or
her testimony or for other reasons sufficient to
you that such testimony is not worthy of belief.

the essential elements of the offense as defined in these instructions by any particular number of witnesses. The testimony of a single witness may be sufficient to convince you beyond a reasonable doubt of the existence of an essential element of the offense charged if you believe beyond a reasonable doubt that the witness was telling the truth.

All available evidence need not be produced.

The law does not require the prosecution to call

as witnesses all persons who may have been present

may appear to have some knowledge of the matters in issue at this trial; nor does the law magnife the prosecution to produce as exhibits all papers and things mentioned in the evidence. However, in judging the cradibility of the witnesses who have testified and considering the weight and effect of all evidence that has been produced, the jury may consider the prosecution's failure to ball other witnesses or to produce other evidence shown by the evidence in the case to be in existence and available.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence, and no adverse inference may be drawn from his failure to do so.

Defendant Takes the Stand.

When a defendant in a case of this kind takes the stand, which he has a perfect right to do, he is subject to all the obligations of witnesses, and his testimony is to be treated like the testimony of any other witness, that is to say, it will be for you to say, remembering the substance of his

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testimony, the manner in which he gave it, his crossexamination, and everything else in the case, whether
or not he told the truth. Then, again, it is for
you to remember, and you have a perfect right to
do so, the interest the defendant has in the case.
As he places himself as a witness, he stands like
any other witness.

Effect of Prior Inconsistent Statements or Conduct--By a Witness not a Party--By the Accused.

Evidence that at some other time a witness other than the accused has said or done something or has failed to say or do something which is inconsistent with the witness's testimony at the trial may be considered by the jury for the sole purpose of judging the credibility of the witness, but may never be considered as evidence or proof of the truth of any such statement.

Where, however, the witness is a defendant on trial in the case and by such statement or other conduct the defendant admits some fact against his interest, then such statement or other conduct, if knowingly made or done, may be considered as evidence of the truth of the fact so admitted as well as for the purpose of judging the credibility

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of the defendant as a witness.

An act or omission is knowingly done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Opinion Evidence-Expert Witness.

witnesses to testify as to opinions or conclusions.

An exception to this rule exists as to those whom

we call expert witnesses. Witnesses who by education

and experience have become expert in some art, science,

profession or calling may state an opinion as to

relevant and material matter in which they profess

to be an expert and may also state their reasons for

the opinion. You should consider each expert opinion

received in evidence in this case and give it such

weight as you may think it deserves.

If you should decide that the opinion of an expert witness is not based upon sufficient education and experience, or if you should conclude that the reasons given in support of the opinion are not sound or that the opinion is outweighed by other evidence, you may disregard the opinion entirely.

Impeachment—Inconsistent Statements or Conduct.
The testimony of a witness may be discredited

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or impeached by showing that he previously made statements which are inconsistent with his present testimony. The earlier contradictory statements are admissible only to impeach the credibility of the witness and not to establish the truth of these statements. It is the province of the jury to determine the credibility, if any, to be given the testimony of a witness who has been impeached.

If a witness is shown knowingly to have testified falsely concerning any material matter, you have a right to distrust such witness's testimony in other particulars and you may reject all the testimony of that witness or give it such credibility as you may think it deserves.

An act or omission knowingly done, if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

Exculpatory Statements Later Shown False.

Conduct of a defendant, including statements knowingly made and acts knowingly done upon being informed that a crime has been committed or upon being confronted with a crimenal charge, may be considered by the jury in light of all other evidence in the case in determining guilt or innocence.

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When a defendant voluntarily and intentionally offers an explanation or makes some statement intending to show his innocence and this explanation or statement is later shown to be false, the jury may consider whether this circumstantial evidence points to a consciousness of guilt. Ordinarily it is reasonable to infer that an innocent person does not usually find it necessary to invent or fabricate an explanation or statement attempting to establish his innocence.

Whether or not evidence as to a defendant's voluntary explanation or statement points to a consciousness of guilt and the significance to be attached to any such evidence are matters exclusively within the province of the jury.

A statement or act is knowingly made or done if done voluntarily and intentionally and not because of mistake or accident or other innocent reason.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Testimony of Federal Officials.

The probable truthfulness and believability of

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every witness is for you and for each of you to decide. That I have already instructed you. The fact that such witnesses come before you as government agents should not in the least change your attitude in this respect. Their testimony does not deserve either greater or lesser believability simply because of their official status.

Whether you do or do not believe any witness must depend upon how truthful you judge that witness to be after you have heard the testimony and formed your own conclusions as to the witness's believability.

Extra-Judicial Statements or Conduct.

Distribution of a court and after a crime has defendant outside of court and after a crime has been committed should always be considered with caution and weighed with great care, and all such evidence should be disregarded entirely unless the evidence in the case convinces the jury beyond a reasonable doubt that the statement or act or omission was knowingly made or done.

A statement or act or omission is knowingly made or done if done voluntarily and intentionally

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and not because of mistake or accident or other innocent reason.

In determining whether any statement or act or omission claimed to have been made by a defendant outside of court and after a crime has been commutted was knowingly made or done, the jury should consider the age, training, education, occupation and physical and mental condition of the defendant and his treatment while in custody or under interrogation as shown by the evidence in the case, and also all other circumstances in evidence surrounding the making of the statement or act or omission, including whether before the statement or act or chission was made or done, the defendant knew or had been told and understood that he was not obligated or required to make or do the statement or act or omission claimed to have been made or done by him; that any statement or act or omission which he might make or do could be used against him in court; that he was entitled to the assistance of counsel before making any statement, either oral or in writing or before doing any act or omission; and that if he was without money or means to retain counsel of his own choice, an attorney would be appointed to advise

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and represent him free of cost or obligation.

If the evidence in the case does not convince beyond a reasonable doubt that the statement was made voluntarily and intentionally, you should disregard it entirely.

On the other hand, if the evidence in the case does show beyond a reasonable doubt that a statement was in fact voluntarily and intentionally made by a defendant, you may consider it as evidence in the case against the defendant who voluntarily and intentionally made the confession.

Statements, When Involuntary.

that a statement would not have been made but for some threat of harm or some offer or promise of immunity from prosecution, or leniency in punishment or other reward, such a statement should not be considered as having been voluntarily made because of the danger that a person accused might be persuaded by the pressure of hope or fear to confess as facts things which are not true in an effort to avoid threatened harm or punishment or to secure a promised reward.

If the evidence in the case leaves the july

with a reasonable doubt as to whether a scatement was voluntarily made, then the jurors should disregard it entirely.

The jury will always bear in mind that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

A. Post-Arrest Statement Incriminating CoDefendant. A post-arrest statement made or act done
by one defendant outside of court may not be considered as evidence against another defendant who
was not present and so did not see the act done or
hear the statement made.

Judging the Evidence.

There is nothing peculiarly different in the way a jury should consider the evidence in a criminal case from that in which all reasonable persons treat any question depending upon evidence presented to whem. You are expected to use your good sense, consider the evidence in the case for only those purposes for which it has been admitted, and give it a reasonable and fair construction in the light of your common knowledge of the natural tendencies and inclinations of human beings.

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If an accused be proved guilty beyond a reasonable doubt, say so; if not so proved guilty, say so.

Keep constantly in mind that it would be a violation of your sworm duty to base a verdict of guilty upon anything other than the evidence in the case, and remember as well that the law never imposes upon a defendant in a criminal case the burden or duty of calling any witnesses or producing any evidence.

Jury's recollection controls.

If any reference by the Court or by counsel to matters of evidence does not coincide with your own recollection, it is your recollection which should control during your deliberations.

Punishment.

Under your oath as jurors you cannot allow a consideration of the punishment which may be imposed upon the defendant if convicted to influence your verdict in any way or in any sense enter into your deliberations.

The duty of imposing sentence rests exclusively upon the Court. Your function is to weigh the evidence in the case and to determine the guilt or innocence

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of the defendant solely upon the basis of such evidence and the law.

You are to decide the case upon the evidence and the evidence alone, and you must not be influenced by any assumption, conjecture or sympathy or any inference not warranted by the facts until proven to your satisfaction.

Exclude Sympathy and Antipathy.

In reaching your verdict you are not to be affected by sympathy or antipathy for any of the parties, what the reaction of the parties or of the public to your verdict may be, whether it will please or displease anyone, be popular or unpopular or, indeed, any consideration outside the case as it has been presented to you in this courtroom.

You should consider only the evidence, both the testimony and the exhibits, find the facts from what you consider to be the believable evidence, and apply the law as I now give it to you to those facts.

Your verdict will be determined by the conclusion thus reached, no matter whom the verdict helps or hurts.

Verdict--Multiple Counts, Multiple Defendants.

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A separate crime or offense is charged against each defendant in each count of the indictment. Each offense and the evidence pertaining to it should be considered separately.

The fact that you may find one of the accused guilty or not guilty of one of the offenses charged should not control your verdict as to other offenses charged against the other defendants.

Consider each Defendant.

It is your duty to give separate personal consideration to the case of each individual defendant. When you do so, you should analyze what the evidence in the case shows with respect to that defendant, leaving out of consideration entirely any evidence admitted solely against some other defendant or defendants.

Each defendant is entitled to have his case determined from evidence as to his own acts and statements and conduct and any other evidence in the case which may be applicable to him.

Unamimous Verdict.

In this type of case there must be a unanimous verdict. That means all twelve of you must agree, and it goes without saying that it becomes incumbent

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upon you to listen to one another and to argue out
the points among yourselves in order to determine
in good conscience whether your fellow juror's
argument is one commensurate with yours or whether
at least you can with good conscience agree with him
or her.

You have no right to stubbornly and idly six by and say, "I'm not talking to anyone. I'm not going to discuss it," because people with common sense and the ability to reason must communicate. They must communicate their thoughts. So anything which appears in the record and about which one of you may not agree, talk it out amongst yourselves and then if you can't agree as to what is in the record, well, you can ask the Court to have that portion of the testimony read back to you. You may do so by knocking on the door and giving a note in writing to the United States Marshal, who will then present it to the Court, and I will then bring you into the courtroom.

The forelady will preside over your deliberations, and will be your spokesman here in court.

As to the form of verdict, as to Count 1, it's not guilty or guilty as to each defendant.

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The three defendants are named in that count.

As to Count 2, it's not guilty or guilty as to each of the defendants named. There are three defendants named.

Count 3, three defendants. As to each defendant, not guilty or guilty.

Count 4, three defendants are named. As to each defendant, not guilty or guilty.

As to Count 5, the three defendants are named. As to each defendant, not guilty or guilty.

Count 6, it's Jose A. Liriano, not guilty or guilty.

Count 7, Cosme A. Caceres, not guilty or guilty.

Count 8, the three defendants are named, that's the conspiracy count. It's not guilty or guilty as to each of the defendants.

At this time the alternates are excused with the thanks of the Court. They are discharged from this case. They may leave. Go downstairs to the jury room. You may leave now, and remove your things from the jury room.

I might also say, in connection with your deliberations, you'll have a copy of the indicament

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to use. I'll also send in all of the evidence except the money which is actually real. You will have all of the counterfeited evidence to use in there during your deliberations. The money which is good money will not be sent in unless the jury requests it. If the jury requests it, the money will be sent in to the jury.

I will speak to the lawyers at side bar.

(Side bar)

THE COURT: Exceptions?

MS. SELTZER: It seems to me in the last count you said they could find any one of them guilty or not guilty. You have to find two guilty.

THE COURT: Yes, that's true, but I think it's consistent. You could find any one not quilty.

MS. SELTZER: You could find two guilty.

THE COURT: I have instructed.

Any exceptions?

MR. GOULD: I have no exceptions, but to ask them -- have it read back, at one point, the outof-court statement of one defendant cannot be used against another. It was not qualified by saying the post-arrest out-of-court statement because the conspiracy, of course, are all out-of-court statements

Charge of the Court

and intended to be used against one another.

THE COURT: Provided they find they were members of the conspiracy. I think that was clarified in the charge.

MR. GOULD: The other thing, your Honor, again just a general statement for the record, is that this charge about if there is innocence and guilt and there is two things you can draw -- you draw the innocent one. That's a general rule, I think that gives the impression the Government has the burden of proof, of proving beyond a reasonable doubt as to each fact in the case. It was not specifically linked in your charge to the elements of the crime.

I have no objection to it, just a general statement.

THE COURT: You just take exception.

MR. GOULD: Yes.

THE COURT: Any other exceptions?

MR. KRAMER: No.

(In open court)

THE COURT: The Clerk may swear in the Marshals.

(Two Marshals are sworn.)

THE COURT: The jury may retire for deliberations. (The jury leaves the courtroom.)

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UNITED STATES OF AMERICA

- ag inst -

COSME A. CACLRES, LEOPOID LCZANO and JOSE 1. L. RIANO,

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Cr. No. 76 (182) (T. 18, U.S.C., \$3 1, 1472 and \$2)

Defendant.

THE GRAND JURY CHARGES:

COUNT ONE

On or about October 31, 19:5, within the Eastern
District of New York, the defendants COSME A. CACERES, LEOPOLI
LOZANO, and JOSE A. LIRIANO, with intent to defraud did utter
and publish counterfeited United States currency, to wit, one
counterfeited twenty dollar Federal Reserve Note, Serial Number
F67681889A, to Sip 'n Smoke Store at 28-16 Broadway, Astoria,
New York, the defendants COSME A. CACERES, LEOPOLD LOZANO and
JOSE A. LIRIANO knowing such note to be counterfeited.
(Title 18, United States Code, Section 472 and Section 2).

COUNT TWO

On or about October 31, 1975, within the Eastern
District of New York, lefendants COSME A. CACERES, LEOPOLD
LOZNIO, and JOSE A. LI MANO, with intent to defraud did utter
and publish counterfeited United States currency, to wit, one
counterfeited twenty dellar Fadara Pessawe Mote, Serial
Number F. 7681889A, to Valken's Bakery, 29-17 Breadway, Astoria,
New York, the defendants COSME A. MACERAS, LEOPOLD LOZANO and
JOSE A. MINIANO knowing such note to be counterfeited. (Times)
18, United States Code, Section 472 and Section 2).

District of New York, defendants COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO, with intent to defraud did utter and publish counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number F67681889A, to Leo-Pete Grocery, 1455 Broadway, Astoria, New York, the defendants COSME A. LEOPOLD LOZANO, and JOSE A. LIRIANO, knowing such note to a counterfeited. (Title 18, United States Code Section 47 and Section 2).

COUNT OUR

On or about October 31, 1975, within the Eastern
District of New York, defendar is COSME A. CACHRES, LEOPOLD
LOZANO, and JOSE 1. LIRIINO, with intent to defraud, did
unter and publish counterfeit 1 United States currenty, to
wit, one counterfeited twenty dollar Federal Pererve Mote,
Serial Number F67081889A to asticceria LaTorre at 32-19
Broadway, Astoria, New York, the defendants COSME A. CACERES,
LEOPOLD LOZANO and JOSE A. LIGIANO, knowing such note to be
counterfeited. (Title 13, United States Code, Section 472
and Section 2).

COUNT FIVE

On or about October 31, 1975, within the Eastern District of New York, defendents COSME A. CACERES, LEOPOLD LOZANO and JOSE A. LIRIANO, with intent to defraud had in their possession counterfeited United States currency, to wit, approximately six counterfeit twenty dollar Federal Reserve Notes, Serial Number P67681889A, and one counterfeited fifty dollar Federal Reserve Note, Serial Number B31985757A, the defendents COSME A. CACERES, LEOPOID LOZANO, and JOSE A. LIR ANO, knowing such notes to be counterfeited.

On or about October 31, 1975, within the Eastern District of New York, defendant JOSE A. LIRIANO, with intent to defraud, did have in his possession, counterfeited United States currency, to wit, one counterfeited fifty dollar Federal Reserve Note, Serial Number B31985757A, the defendant JOSE A. LIRIANO, knowing such note to be counterfeited. (Title 18, United States Code, Section 472).

COUNT SEVEN

On or about October 11, 1 75, within the Eastern District of New York, defendant COS E A. CACERES, with intent to defraud, did have in his possess on, counterfeited United States currency, to wit, one counterfeited twenty dollar Federal Reserve Note, Serial Number *67681889A, the defendant COSME A. CACERES, knowing such note to be counterfeited. (Title 18, United States Code, Jest: on 472).

COUNT EI HT

On or about October 3.., 1975, within the Eastern District of New York, de endant: COS E A. CACERES, LEOPOLD . LOZANO, and JOSE A. LIRIANO did know ngly and wilfully conspire, to commit in offense against the Uni ed States in violation of Title 18, United States Code, Sec ion 472 by conspiring to possess and conspiring to utter and publish a quantity of counterfeited United States currency, to wit counterfeited twenty dollar Federal Reserve Motes, Serial Number F67681889A and counterfeited fifty dollar Tederal Reserve Notes B31985757A Title 18, United States Code, Section 371.

In furtherance of the said unia ful conspiracy and for the purposes of effecting the objectives thereof, the defendants COSME A. CACERES, LECPQLD LOZAMO, and JOSE A.

LIRIANO committed the following:

2) On or about October 31, 1975, the defendant COSME A. CACERES entered the Sip 'n Smoke store at 28-16 Broadway in Astoria Queens.

A. CACERAS, LEOPALD LCZAHO, and JOSE A. LIRIANO drove in a 1968 Chrysler, New York license plate 920XLL, from 28-16 Broadway to 1455 Broadway in Astoria, Queens.

A TRUE BILL.

FOREMAN.

DAVID G. TRAGER

UNITED STATES ATTORNEY

Federal Reserve Notes.

EASTERN DISTRICT OF NEW YORK

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1 1 1 1	CACERES 1; LOZANO PROCEEDINGS - AUSA CO COTAN CACERES 1; LOZANO PROCEEDINGS - AUSA CO COTAN CACERES 1; LOZANO PROCEEDINGS - AUSA CO COTAN Arraignment before Judge Bartels - AUSA CO COTAN Arraignment before Judge Bartels - AUSA CO COTAN Seltzer, Esq. Legal Aid Society for all defendants. Seltzer, Esq. Legal Aid Society for all defendants. Seltzer, Esq. Legal Aid Society for all defendants. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 16 Court St. Counsel assigned - Benjamin A. Demos, Esq. 17 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St. Counsel assigned - Benjamin A. Demos, Esq. 18 Court St.
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£ 2	Defendant released. Defendant released. J - Indictment - deft & counsel Before Mishler, Ch J - case called - deft & counsel Before BRAMWELL, J - case calle
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V. PROCEEDINGS (continued) Before BRAMWELL, J. - case called - deft and counsely present-motion to suppress denied-hearing concluded trial ordered and begun-jurors selected and sword trial contd to 6/8/85 Before BRAMWELL, J - case called - deft & counsel present Interpreter Mr. Boyne present - trial resumed - trial contd to June 9, 1976 Before BRAMWELL, J - case called - deft & counsel present -Interpreter Mr. Boyne present - trial resumed - Covt rests deft moves pursuant to Rule 29 etc. Motion denied - trial contd to June 10, 1976 @ 10:30 am Before BRAMWELL, J .- Case called- deft and counsel 1/76 present- interpreter present- trial resumed- deft rests- deft renews motions pursuant to Eule 29 etc. motion denied-trial contd to 6/14/76 Govts requests to charge filed Before BRAMWELL, J - case called deft & counsel present Interpreter Mr. Barron Boyne present - trial resumed Juryal retires to deliberate at 3.55 PMa - Jury came into court at 5:30 PM for reading of testimony of deft Caceres - Jary tetires for deliberations at 7115 PM - Order of sustenance signed - July came into court at 10:45 PM and sent home by the Court - trial contd to June 15, 1976 at 10:00 am. By BRAMWELL, J - Order of sustenance filed. Before BRAMWELL, J - case called - deft & counsel present Interpreter Mr. Boyne present - trial resumed - Jury rand deliberations at 10:15 am - Jury came into court and rend a verdict of guilty on counts 1 to 5 incl., and 8 - jery polled and jury discharged - all defts move pursuant to mule; motion denied - bail contd and sentence adjd without date concluded By BRAMWELL, J - Order of sustenance filed. Before BRAMWELL, J. - Case called Deft &Counsel present. Beron Bo sworn in as Interpreter. Deft is sentenced to imprisoment with a term (2 years. Deft to serve 4 months and exectuaton of of sentence is suspended and deft is placed onprobation for period of 3 yrs on count (1) pursuant to T-18: 3651. Imposition of sentences are suspended on counts (2)(3)(4)(5) & (8) & definition of placed on probation for a period of 3 years. All sentences on cts 2,3,4,5, & 8 are to run concurrent. Special condition of probation is if deft is deported he is not to re-enter the U.S. during his probation, exept at the request of the Atty. General of the U.S. or the court. ourt has taken into consideration the prior to sentencing. Deft advised of his right to appeal in forms pauperies. Court assigns Mr. Benjamin A. Demos for appart. Bail continued pending appeal. Judgment & Commitment filed. Copies to Marshals & proabation. By BRAMWELL, J. - Order releasing bial to Pretrial Services Agency to report once weekly. of Appeal filed duplicate of Notice of Appeal mailed to the Court of Appeala. 165 rottomp is diameter

(per Section II)

	LEOPOLD LOZANO	The state of the s	K
DATE	PROCEEDINGS (continued)	1 4 1 81 31 8 4 3	7
9-27-76	Notice of motion filed to reduce sent to Chambers)	ence(forwarded)	4
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10/14/76	By BRAMWELL, J Motion to reduce se	ntence pursuant	4
	to rule 35 is ordered denied. Order received from Court of Appeal the be docketed on October 19, 1976.	at the record	**
11/4/76	Stenogrpahers transcript dated 6/8/76 and 6/14/76 filed.	, 6/9/76, 6/10/	6
1/8/76	Supplemental record on appeal certific to the C of A by Joan Gill.	ed and delivere	100
1-15-76	Voucher forwarded to the court of app	peals for	3
11-16-76	June 3, 1976; June 7, 1976; June 7, 1976; June 14, 15		57
1,16/76	and June 15, 1976 filed. Supplemental record on appeal certification	led and deliver	1
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